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Introduction

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

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

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

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

Notice of Proposed Rulemaking

Tracking number

2021-00745

Department

200 - Department of Revenue

Agency

203 - Liquor and Tobacco Enforcement Division

CCR number

1 CCR 203-1

Rule title

COLORADO CIGARETTE, TOBACCO PRODUCT, AND NICOTINE PRODUCT RETAILER RULES

Rulemaking Hearing

Date

12/16/2021

Time

10:00 AM

Location

VIRTUAL https://meet.google.com/ycu-zocv-zbc

Subjects and issues involved

Rule 7-300 and 7-500. This proposed amendment aligns this rule with §44-7-104(5)(a)(II) C.R.S., which allows retailers with more than 10 retail locations to apply with the Division as a large-operator. The amendment corrects the current language of the rule that allows retailers with 10 or more retail locations to apply as a large-operator.

Rule 7-601. This proposed amendment adds a new subparagraph under paragraph (H) that mirrors penalties required by statute. A retailer that sells or offers to sell cigarettes, tobacco products, or nicotine products without displaying a warning sign for a fifth time in a 24-month period is required to face a penalty of at least $250.00 but not more than $1,000.00 according to §44-7-106(4)(b)(IV) C.R.S. The rule previously did not list penalties for the fifth violation.

Statutory authority

Sections 44-7-103, 44-7-105, and 44-7-106, C.R.S

Contact information

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DEPARTMENT OF REVENUE

Liquor and Tobacco Enforcement Division

COLORADO CIGARETTE, TOBACCO PRODUCT, AND NICOTINE PRODUCT RETAILER RULES

1 CCR 203-1

Rule 7-300. Large-Operators.

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-104(5)(a)(I), and 44-7-104(5)(a)(II), C.R.S. The purpose of this rule is to establish large-operator application requirements and associated license fees for retail locations under the same corporate or business entity.

A. A retailer that operates more than ten retail locations under the same corporate or business entity, including franchises, may, subject to the requirements of this Rule 7-300, apply as a large-operator and use one application to obtain licenses for each retail location.

B. A large-operator application shall be made upon forms prescribed by the Division. The Division will not consider an application that is not complete in every material detail, or which is not accompanied by the remittance in full of the whole amount of the large-operator license fee established in Rule 7-500. Every large-operator application shall identify each retail location operated by the large-operator and shall include the business address, owner/manager information, phone number, and email address for each retail location.

C. The large-operator applicant must provide approved local licenses for any and all retail locations subject to local licensing with the application.

D. The large-operator license fee shall be considered a single fee, and it shall be paid in one transaction. In order to cover the direct and indirect costs of administration and enforcement of article 7, of title 44, C.R.S, the large-operator license fee shall be calculated based on the number of retail locations operated by the large-operator.

E. Notwithstanding the use of a large-operator application and the payment of the relevant large-operator application fee, each retail location operated by the large-operator shall be issued a separate license from the Division. The use of a large-operator application and payment of a large-operator fee shall not preclude the Division from conducting compliance checks and investigations for each separate retail location and pursuing administrative penalties on each separate license possessed and operated by the large-operator.

Rule 7-500. Fees.

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-104(5), 44-7-104.5(1), and 44-7-104.7(3)(b), C.R.S. The purpose of this rule is to establish fees for certain licenses and permits that may be issued by the Division.

Below are the fees established by the Executive Director:

License Fees

Cigarette, Tobacco Product, or Nicotine Product Retailer License***** ……..	$400.00

(* - classifications include: On-Premises Retailer; Off-Premises Retailer; and Cigar-Tobacco Bar).	
Temporary License ……..	$35.00
Cigarette, Tobacco Product, or Nicotine Product Retailer License Renewal…….……..	$400.00
Large-Operator License(s) …….....	$400.00*****
(* - retailers who have more than 10 retail locations under the same corporate or business entity may apply, simultaneously and on one form, for licenses for all retail locations that sell cigarettes, tobacco products, and nicotine products. The large-operator license fee, which is to be paid in one transaction regardless of number of licensed retail locations applied for, is to be calculated on a per-retail location basis in order to cover the direct and indirect costs of administration and enforcement of Article 7, Title 44, C.R.S.). **Permit Fees**	
Delivery Permit ……	$250.00
Permit Renewal ……..……..	$250.00

Rule 7-601. Penalties.

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-103, 44-7-105, 44-7-106, C.R.S. The purpose of this rule is to clarify the penalties for violating various provisions of article 7 of title 44.

A. If a retailer is found to have violated article 7 of title 44, or any rule promulgated pursuant to article 7, the Division may fine a retailer or, if the retailer holds a state license, suspend or revoke the retailer's state license in accordance with section 44-7-106, C.R.S., and the provisions of this Rule 7-601. See also Rule 7-705. License Denials, Disciplinary Actions, and Hearings.

B. Underage Sales.

1. Penalties. The following penalties shall apply for sales to a person under twenty-one years of age in violation of section 44-7-103(1), C.R.S.:

a. First Violation. If the retailer has had no previous underage sale violations in the preceding twenty-four months, then the licensee shall be subject to a fine of at least $250.00 and not more than $500.00.

b. Second Violation. If the retailer had one previous underage sale violation in the preceding twenty-four month period, the retailer shall be subject to:

i. A fine of at least $500.00 and not more than $750.00; and

ii. If the retailer holds a state license, a suspension of the state license for at least seven days or, if the retailer does not hold a state license, a prohibition against the retailer selling cigarettes, tobacco products, or

nicotine products at the retail location at which the violation occurred for at least seven days.

c. Third Violation. If the retailer has had two previous underage sale violations in the preceding twenty-four month period, the retailer shall be subject to:

i. A fine of at least $750.00 and not more than $1000.00; and

ii. If the retailer holds a state license, a suspension of the state license for at least thirty days or, if the retailer does not hold a state license, a prohibition against the retailer selling cigarettes, tobacco products, or nicotine products at the retail location at which the violation occurred for at least thirty days.

d. Fourth or Subsequent Violation. If the retailer has had three or more previous underage sale violations in the preceding twenty-four month period, the retailer shall be subject to:

i. A fine of at least $1,000.00 and not more than $15,000.00; and

ii. If the retailer holds a state license, a suspension or revocation of the retailer's state license or, if the retailer does not hold a state license, a prohibition against the retailer selling cigarettes, tobacco products, or nicotine products at the retail location at which the violation occurred for up to three years.

2. Affirmative Defenses. Notwithstanding the provisions of paragraph B(1), a fine for a violation of section 44-7-103(1), C.R.S. shall not be imposed upon a retailer that can establish an affirmative defense to the satisfaction of the division or the hearing officer that, prior to the date of the violation, it:

a. Had adopted and enforced a written policy against selling cigarettes, tobacco products, or nicotine products to persons under twenty-one years of age;

b. Had informed its employees of the applicable laws regarding the sale of cigarettes, tobacco products, or nicotine products to persons under twenty-one years of age;

c. Required employees to verify the age of cigarette, tobacco product, or nicotine product customers by way of photographic identification; and

d. Had established and imposed disciplinary sanctions for noncompliance.

3. Except as provided in section 44-7-106(5), C.R.S., the affirmative defense established in paragraph B(2) may be used by a retailer only once at each location within any twenty-four-month period.

a. Pursuant to section 44-7-106(5), C.R.S., a licensed gaming establishment that has a cigar-tobacco bar on July 14, 2020, shall be afforded two affirmative defenses within a twenty-four-month period.

C. Sales of Loose Cigarettes. The following penalties shall apply for sales, or offers to sell, in violation of section 44-3-103(4), C.R.S.:

1. First Violation. If the retailer has not violated section 44-3-103(4), C.R.S., in the preceding twenty-four months, the retailer shall receive a written warning.

2. Second Violation. If the retailer violated section 44-3-103(4), C.R.S., once in the preceding twenty-four month period, the retailer shall be subject to a fine of $250.00.

3. Third Violation. If the retailer violated section 44-3-103(4), C.R.S., twice in the preceding twenty-four month period, the retailer shall be subject to a fine of $500.00.

4. Fourth Violation. If the retailer violated section 44-3-103(4), C.R.S., three times in the preceding twenty-four month period, the retailer shall be subject to a fine of $1,000.00.

5. Fifth or Subsequent Violation. If the retailer violated section 44-3-103(4), C.R.S., four or more times in the preceding twenty-four month period, the retailer shall be subject to a fine of at least $1,000.00 and not more than $15,000.00

D. Unlicensed Sales. On or after July 1, 2021, the following penalties shall apply for a person who sells or offers to sell cigarettes, tobacco products, or nicotine products without a valid state license issued pursuant to article 7 of title 44:

1. First Violation. If the person has not violated section 44-7-104.5(1), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of $1,000.00.

2. Second Violation. If the person has one prior violation of section 44-7-104.5(1), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of $2,000.00.

3. Third or Subsequent Violation. If the person has two or more prior violations of section 44-7-104.5(1), C.R.S., in the preceding twenty-four months, the person shall be subject to:

   a. A fine of $3,000.00; and

   b. An order issued by the Division prohibiting the retailer from selling cigarettes, tobacco products, or nicotine products and rendering the retailer ineligible to apply for a state license for three years.

4. For purposes of determining the existence and number of prior violations for purposes of this paragraph (D), each sale or offer to sell cigarettes, tobacco products, or nicotine products without a valid state license is a distinct violation.

E. Unlawful Advertising of Electronic Smoking Device Product. The following penalties shall apply for a retailer who advertises an electronic smoking device product in a manner that is visible from outside the retail location in violation of section 44-7-104.7(2), C.R.S.

1. First Violation. If the person has not violated section 44-7-104.7(2), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of $1,000.00.

2. Second Violation. If the person has one prior violation of section 44-7-104.7(2), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of $2,000.00.

3. Third or Subsequent Violation. If the person has two or more prior violations of section 44-7-104.7(2), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of $3,000.00.

F. Delivery and Shipment Violations. The following penalties shall apply for a person that ships or delivers cigarettes, tobacco products, or nicotine products directly to a consumer in Colorado in violations of the requirements of 44-7-104.7(3), C.R.S., and any rules promulgated pursuant to article 7 of title 44:

1. First Violation. If the person has not violated section 44-7-104.7(3), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of $1,000.00.

2. Second Violation. If the person has one prior violation of section 44-7-104.7(3), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of $2,000.00.

3. Third or Subsequent Violation. If the person has two or more prior violations of section 44-7-104.7(3), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of $3,000.00.

G. Vending Machine Sales. The following penalties shall apply for a retailer that sells or offers to sell any cigarettes, tobacco products, or nicotine products by use of a vending machine or other coin-operated machine in violation of section 44-7-103(2), C.R.S.:

1. First Violation. If the retailer has not violated section 44-7-103(2), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $25.00.

2. Second Violation. If the retailer has one prior violation of section 44-7-103(2), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $50.00.

3. Third Violation. If the retailer has two prior violations of section 44-7-103(2), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $100.00.

4. Fourth Violation. If the retailer has three prior violations of section 44-7-103(2), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $250.00.

5. Fifth or Subsequent Violation. If the retailer has four or more prior violations of section 44-7-103(2), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of at least $250.00 but not more than $1,000.00.

H. Warning Sign Violations. The following penalties shall apply for a retailer that sells or offers to sell cigarettes, tobacco products, or nicotine products without displaying a warning sign in conformance with the requirements of section 44-7-103(3), C.R.S.:

1. First Violation. If the retailer has not violated section 44-7-103(3), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a written warning.

2. Second Violation. If the retailer has one prior violation of section 44-7-103(3), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $50.00.

3. Third Violation. If the retailer has two prior violations of section 44-7-103(3), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $100.00.

4. Fourth Violation. If the retailer has three prior violations of section 44-7-103(3), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $250.00.

5. Fifth Violation. If the retailer has four prior violations of section 44-7-103(3), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of at least $250.00 but not more than $1,000.

I. Sales By Persons Under Eighteen Years of Age. The following penalties shall apply for a retailer that permits a person under eighteen years of age to sell or participate in the sale of cigarettes, tobacco products, or nicotine products in violation of section 44-7-103(4.5), C.R.S.:

1. First Violation. If the retailer has not violated section 44-7-103(4.5), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $25.00.

2. Second Violation. If the retailer has one prior violation of section 44-7-103(4.5), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $50.00.

3. Third Violation. If the retailer has two prior violations of section 44-7-103(4.5), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $100.00.

4. Fourth Violation. If the retailer has three prior violations of section 44-7-103(4.5), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $250.00.

5. Fifth or Subsequent Violation. If the retailer has four or more prior violations of section 44-7-103(4.5), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of at least $250.00 but not more than $1,000.00.

J. Suspension.

1. Prohibited Activity During Active Suspension. During any period of license suspension, the retailer shall not sell or permit the selling of cigarettes, tobacco products, or nicotine products.

2. Suspension Notice. Every retailer whose state license has been suspended by the Division, whether summarily or after an administrative hearing, shall, if ordered to, post two notices in conspicuous places, one on the exterior and one on the interior of the retail location, for the duration of the suspension.

   a. The notices shall be two feet in length and fourteen inches in width containing lettering not less than ½ inch in height, and shall be in the following form:

      NOTICE OF SUSPENSION. THE CIGARETTE, TOBACCO PRODUCTS, AND NICOTINE RETAILER LICENSE ISSUED FOR THE RETAIL LOCATION HAS BEEN SUSPENDED BY ORDER OF THE LIQUOR ENFORCEMENT DIVISION, COLORADO DEPARTMENT OF REVENUE FOR VIOLATION OF ARTICLE 7 OF TITLE 44 OF THE COLORADO REVISED STATUTES.

   b. Advertising or posting signs to the effect that the premises have been closed or business suspended for any reason other than by order of the Division suspending its state license, shall be deemed a violation of this rule.

3. Renewal. Suspension of a license or permit does not relieve the retailer of the obligation to timely comply with all license or permit renewal requirements.

NOTICE OF RULEMAKING HEARING

Department of Revenue
Liquor Enforcement Division

The Executive Director of the Colorado Department of Revenue, on behalf of the Liquor Enforcement Division ("Division"), will consider the promulgation of amendments to the Colorado Cigarette, Tobacco Product, and Nicotine Product Retailer Rules, 1 C.C.R. 203-1, as authorized by Article 7 of Title 44, C.R.S. For specific information and language concerning the proposed changes and new rules, please refer to the contents of this Notice and to the proposed rules that are set forth following this notice and are available on the Division's website: https://sbg.colorado.gov/liquor-tobacco/tobacco.

STATUTORY AUTHORITY FOR RULEMAKING

The Executive Director promulgates the amendments to these rules pursuant to the authority granted in section 44-7-104(5), C.R.S., and section 24-4-103, C.R.S., of the Administrative Procedure Act.

SUBJECT OF RULEMAKING

The proposed amended rules and relevant information are posted on the Division's website, https://sbg.colorado.gov/liquor-tobacco/tobacco. In addition, the proposed rules attached to this Notice are fully incorporated herein.

The Executive Director will consider the promulgation of the following list of existing rules with proposed changes. For specific information and language concerning the proposed changes, please refer to the proposed rules that are set forth with this Notice, posted on Division's website, and posted on the Colorado Secretary of State's website.

RULES TO BE CONSIDERED FOR AMENDMENT OR ADOPTION

The Rules to be considered for amendment are described as follows:

Rule 7-300 – Large-Operators.
Rule 7-500 – Fees.
Rule 7-601 – Penalties.

RULEMAKING RECORD AND PUBLIC PARTICIPATION

1. Official Rulemaking Record. The official record for purposes of the rulemaking hearing to be held on December 16, 2021, will include any written comments or oral testimony submitted or presented.

2. Written Comments. The Executive Director encourages interested parties to submit written comments on the proposed rules, including alternate proposals, by December 14, 2021, so that the

Executive Director can review comments prior to the rulemaking hearing. Written comments will also be accepted after that date. The deadline to submit written comments is 5:00 P.M. on December 20, 2021. Written comments may be emailed to: dor_ledtobacco_rulemaking@state.co.us. In addition, you may submit written comments to:

Liquor Enforcement Division
Attn: Tobacco Rules
1707 Cole Blvd
Suite 300
Lakewood, CO 80401

3. Oral Comments. At his discretion, the Executive Director may afford interested parties an opportunity to make brief oral presentations at the rulemaking hearing. If allowed, oral presentations likely will be limited to two minutes or less per person. Individuals will not be allowed to cede their time to another person (for instance, one person speaking on behalf of five people will not be given ten minutes to speak). Organized groups of individuals are urged to identify one spokesperson and to be concise.

HEARING SCHEDULE

Date: December 16, 2021
Time: 10:00 a.m. - 12:00 p.m.
Location: Due to the ongoing nature of the COVID-19 pandemic, this hearing will be held virtually through Zoom. Access details are below:

Video call link: https://meet.google.com/ycu-zocv-zbc
Or dial: (US) +1 316-536-0908 PIN: 198 466 909#

Access links/Meeting IDs for the rulemaking hearing will also be posted on the Division's website and the Secretary of State's website.

The hearing may be continued at such place and time as the Executive Director may announce.

The Executive Director shall deliberate upon the rulemaking record, including oral testimony and written submissions presented, as well as applicable legal provisions and any related matters properly submitted before the hearing record is closed. Pursuant to said hearing, in the above-entitled matter at the time and place aforesaid, or at any adjourned meeting, the Executive Director will adopt such rules as in its judgment are justified by the rulemaking record and applicable legal provisions.

If you are an individual with a disability who needs a reasonable accommodation in order to participate in this rulemaking hearing, please contact Chris Manning at Chris.Manning@state.co.us no later than December 9, 2021.

Dated this ____ day of _____, 2021.

THE COLORADO DEPARTMENT OF REVENUE,
LIQUOR ENFORCEMENT DIVISION

Mark Ferrandino

Digitally signed by Mark Ferrandino
Date: 2021.11.12 14:19:18 -07'00'

Mark Ferrandino
Executive Director/Chief Executive Officer
Colorado Department of Revenue

DEPARTMENT OF REVENUE

Liquor and Tobacco Enforcement Division

COLORADO CIGARETTE, TOBACCO PRODUCT, AND NICOTINE PRODUCT RETAILER RULES

1 CCR 203-1

Rule 7-300. Large-Operators.

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-104(5)(a)(I), and 44-7-104(5)(a)(II), C.R.S. The purpose of this rule is to establish large-operator application requirements and associated license fees for retail locations under the same corporate or business entity.

A. A retailer that operates more than ten ~~or more~~ retail locations under the same corporate or business entity, including franchises, may, subject to the requirements of this Rule 7-300, apply as a large-operator and use one application to obtain licenses for each retail location.

B. A large-operator application shall be made upon forms prescribed by the Division. The Division will not consider an application that is not complete in every material detail, or which is not accompanied by the remittance in full of the whole amount of the large-operator license fee established in Rule 7-500. Every large-operator application shall identify each retail location operated by the large-operator and shall include the business address, owner/manager information, phone number, and email address for each retail location.

C. The large-operator applicant must provide approved local licenses for any and all retail locations subject to local licensing with the application.

D. The large-operator license fee shall be considered a single fee, and it shall be paid in one transaction. In order to cover the direct and indirect costs of administration and enforcement of article 7, of title 44, C.R.S, the large-operator license fee shall be calculated based on the number of retail locations operated by the large-operator.

E. Notwithstanding the use of a large-operator application and the payment of the relevant large-operator application fee, each retail location operated by the large-operator shall be issued a separate license from the Division. The use of a large-operator application and payment of a large-operator fee shall not preclude the Division from conducting compliance checks and investigations for each separate retail location and pursuing administrative penalties on each separate license possessed and operated by the large-operator.

Rule 7-500. Fees.

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-104(5), 44-7-104.5(1), and 44-7-104.7(3)(b), C.R.S. The purpose of this rule is to establish fees for certain licenses and permits that may be issued by the Division.

Below are the fees established by the Executive Director:

License Fees

Cigarette, Tobacco Product, or Nicotine Product Retailer License* ……..	$400.00
(* - classifications include: On-Premises Retailer; Off-Premises Retailer; and Cigar-Tobacco Bar).	
Temporary License …….	$35.00
Cigarette, Tobacco Product, or Nicotine Product Retailer License Renewal……...……..	$400.00
Large-Operator License(s) …….....	$400.00 *
(* - retailers who have more than 10 ~~or more~~ retail locations under the same corporate or business entity may apply, simultaneously and on one form, for licenses for all retail locations that sell cigarettes, tobacco products, and nicotine products. The large-operator license fee, which is to be paid in one transaction regardless of number of licensed retail locations applied for, is to be calculated on a per-retail location basis in order to cover the direct and indirect costs of administration and enforcement of Article 7, Title 44, C.R.S.). **Permit Fees**	
Delivery Permit ……..……	$250.00
Permit Renewal ……...…….	$250.00

Rule 7-601. Penalties.

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsections 44-7-103, 44-7-105, 44-7-106, C.R.S. The purpose of this rule is to clarify the penalties for violating various provisions of article 7 of title 44.

A. If a retailer is found to have violated article 7 of title 44, or any rule promulgated pursuant to article 7, the Division may fine a retailer or, if the retailer holds a state license, suspend or revoke the retailer's state license in accordance with section 44-7-106, C.R.S., and the provisions of this Rule 7-601. See also Rule 7-705. License Denials, Disciplinary Actions, and Hearings.

B. Underage Sales.

1. Penalties. The following penalties shall apply for sales to a person under twenty-one years of age in violation of section 44-7-103(1), C.R.S.:

a. First Violation. If the retailer has had no previous underage sale violations in the preceding twenty-four months, then the licensee shall be subject to a fine of at least $250.00 and not more than $500.00.

b. Second Violation. If the retailer had one previous underage sale violation in the preceding twenty-four month period, the retailer shall be subject to:

i. A fine of at least $500.00 and not more than $750.00; and

ii. If the retailer holds a state license, a suspension of the state license for at least seven days or, if the retailer does not hold a state license, a prohibition against the retailer selling cigarettes, tobacco products, or nicotine products at the retail location at which the violation occurred for at least seven days.

c. Third Violation. If the retailer has had two previous underage sale violations in the preceding twenty-four month period, the retailer shall be subject to:

i. A fine of at least $750.00 and not more than $1000.00; and

ii. If the retailer holds a state license, a suspension of the state license for at least thirty days or, if the retailer does not hold a state license, a prohibition against the retailer selling cigarettes, tobacco products, or nicotine products at the retail location at which the violation occurred for at least thirty days.

d. Fourth or Subsequent Violation. If the retailer has had three or more previous underage sale violations in the preceding twenty-four month period, the retailer shall be subject to:

i. A fine of at least $1,000.00 and not more than $15,000.00; and

ii. If the retailer holds a state license, a suspension or revocation of the retailer’s state license or, if the retailer does not hold a state license, a prohibition against the retailer selling cigarettes, tobacco products, or nicotine products at the retail location at which the violation occurred for up to three years.

2. Affirmative Defenses. Notwithstanding the provisions of paragraph B(1), a fine for a violation of section 44-7-103(1), C.R.S. shall not be imposed upon a retailer that can establish an affirmative defense to the satisfaction of the division or the hearing officer that, prior to the date of the violation, it:

a. Had adopted and enforced a written policy against selling cigarettes, tobacco products, or nicotine products to persons under twenty-one years of age;

b. Had informed its employees of the applicable laws regarding the sale of cigarettes, tobacco products, or nicotine products to persons under twenty-one years of age;

c. Required employees to verify the age of cigarette, tobacco product, or nicotine product customers by way of photographic identification; and

d. Had established and imposed disciplinary sanctions for noncompliance.

3. Except as provided in section 44-7-106(5), C.R.S., the affirmative defense established in paragraph B(2) may be used by a retailer only once at each location within any twenty-four-month period.

a. Pursuant to section 44-7-106(5), C.R.S., a licensed gaming establishment that has a cigar-tobacco bar on July 14, 2020, shall be afforded two affirmative defenses within a twenty-four-month period.

C. Sales of Loose Cigarettes. The following penalties shall apply for sales, or offers to sell, in violation of section 44-3-103(4), C.R.S.:

1. First Violation. If the retailer has not violated section 44-3-103(4), C.R.S., in the preceding twenty-four months, the retailer shall receive a written warning.

2. Second Violation. If the retailer violated section 44-3-103(4), C.R.S., once in the preceding twenty-four month period, the retailer shall be subject to a fine of $250.00.

3. Third Violation. If the retailer violated section 44-3-103(4), C.R.S., twice in the preceding twenty-four month period, the retailer shall be subject to a fine of $500.00.

4. Fourth Violation. If the retailer violated section 44-3-103(4), C.R.S., three times in the preceding twenty-four month period, the retailer shall be subject to a fine of $1,000.00.

5. Fifth or Subsequent Violation. If the retailer violated section 44-3-103(4), C.R.S., four or more times in the preceding twenty-four month period, the retailer shall be subject to a fine of at least $1,000.00 and not more than $15,000.00

D. Unlicensed Sales. On or after July 1, 2021, the following penalties shall apply for a person who sells or offers to sell cigarettes, tobacco products, or nicotine products without a valid state license issued pursuant to article 7 of title 44:

1. First Violation. If the person has not violated section 44-7-104.5(1), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of $1,000.00.

2. Second Violation. If the person has one prior violation of section 44-7-104.5(1), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of $2,000.00.

3. Third or Subsequent Violation. If the person has two or more prior violations of section 44-7-104.5(1), C.R.S., in the preceding twenty-four months, the person shall be subject to:

a. A fine of $3,000.00; and

b. An order issued by the Division prohibiting the retailer from selling cigarettes, tobacco products, or nicotine products and rendering the retailer ineligible to apply for a state license for three years.

4. For purposes of determining the existence and number of prior violations for purposes of this paragraph (D), each sale or offer to sell cigarettes, tobacco products, or nicotine products without a valid state license is a distinct violation.

E. Unlawful Advertising of Electronic Smoking Device Product. The following penalties shall apply for a retailer who advertises an electronic smoking device product in a manner that is visible from outside the retail location in violation of section 44-7-104.7(2), C.R.S.

1. First Violation. If the person has not violated section 44-7-104.7(2), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of $1,000.00.

2. Second Violation. If the person has one prior violation of section 44-7-104.7(2), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of $2,000.00.

3. Third or Subsequent Violation. If the person has two or more prior violations of section 44-7-104.7(2), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of $3,000.00.

F. Delivery and Shipment Violations. The following penalties shall apply for a person that ships or delivers cigarettes, tobacco products, or nicotine products directly to a consumer in Colorado in violations of the requirements of 44-7-104.7(3), C.R.S., and any rules promulgated pursuant to article 7 of title 44:

1. First Violation. If the person has not violated section 44-7-104.7(3), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of $1,000.00.

2. Second Violation. If the person has one prior violation of section 44-7-104.7(3), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of $2,000.00.

3. Third or Subsequent Violation. If the person has two or more prior violations of section 44-7-104.7(3), C.R.S., in the preceding twenty-four months, the person shall be subject to a fine of $3,000.00.

G. Vending Machine Sales. The following penalties shall apply for a retailer that sells or offers to sell any cigarettes, tobacco products, or nicotine products by use of a vending machine or other coin-operated machine in violation of section 44-7-103(2), C.R.S.:

1. First Violation. If the retailer has not violated section 44-7-103(2), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $25.00.

2. Second Violation. If the retailer has one prior violation of section 44-7-103(2), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $50.00.

3. Third Violation. If the retailer has two prior violations of section 44-7-103(2), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $100.00.

4. Fourth Violation. If the retailer has three prior violations of section 44-7-103(2), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $250.00.

5. Fifth or Subsequent Violation. If the retailer has four or more prior violations of section 44-7-103(2), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of at least $250.00 but not more than $1,000.00.

H. Warning Sign Violations. The following penalties shall apply for a retailer that sells or offers to sell cigarettes, tobacco products, or nicotine products without displaying a warning sign in conformance with the requirements of section 44-7-103(3), C.R.S.:

1. First Violation. If the retailer has not violated section 44-7-103(3), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a written warning.

2. Second Violation. If the retailer has one prior violation of section 44-7-103(3), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $50.00.

3. Third Violation. If the retailer has two prior violations of section 44-7-103(3), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $100.00.

4. Fourth Violation. If the retailer has three prior violations of section 44-7-103(3), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $250.00.

5. Fifth Violation. If the retailer has four prior violations of section 44-7-103(3), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of at least $250.00 but not more than $1,000.

I. Sales By Persons Under Eighteen Years of Age. The following penalties shall apply for a retailer that permits a person under eighteen years of age to sell or participate in the sale of cigarettes, tobacco products, or nicotine products in violation of section 44-7-103(4.5), C.R.S.:

1. First Violation. If the retailer has not violated section 44-7-103(4.5), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $25.00.

2. Second Violation. If the retailer has one prior violation of section 44-7-103(4.5), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $50.00.

3. Third Violation. If the retailer has two prior violations of section 44-7-103(4.5), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $100.00.

4. Fourth Violation. If the retailer has three prior violations of section 44-7-103(4.5), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of $250.00.

5. Fifth or Subsequent Violation. If the retailer has four or more prior violations of section 44-7-103(4.5), C.R.S., in the preceding twenty-four months, the retailer shall be subject to a fine of at least $250.00 but not more than $1,000.00.

J. Suspension.

1. Prohibited Activity During Active Suspension. During any period of license suspension, the retailer shall not sell or permit the selling of cigarettes, tobacco products, or nicotine products.

2. Suspension Notice. Every retailer whose state license has been suspended by the Division, whether summarily or after an administrative hearing, shall, if ordered to, post two notices in conspicuous places, one on the exterior and one on the interior of the retail location, for the duration of the suspension.

a. The notices shall be two feet in length and fourteen inches in width containing lettering not less than ½ inch in height, and shall be in the following form:

NOTICE OF SUSPENSION. THE CIGARETTE, TOBACCO PRODUCTS, AND NICOTINE RETAILER LICENSE ISSUED FOR THE RETAIL LOCATION HAS BEEN SUSPENDED BY ORDER OF THE LIQUOR ENFORCEMENT DIVISION, COLORADO DEPARTMENT OF REVENUE FOR VIOLATION OF ARTICLE 7 OF TITLE 44 OF THE COLORADO REVISED STATUTES.

b. Advertising or posting signs to the effect that the premises have been closed or business suspended for any reason other than by order of the Division suspending its state license, shall be deemed a violation of this rule.

3. Renewal. Suspension of a license or permit does not relieve the retailer of the obligation to timely comply with all license or permit renewal requirements.

Notice of Proposed Rulemaking

Tracking number

2021-00738

Department

200 - Department of Revenue

Agency

207 - Division of Gaming - Rules promulgated by Gaming Commission

CCR number

1 CCR 207-2

Rule title

SPORTS BETTING REGULATIONS

Rulemaking Hearing

Date

12/16/2021

Time

09:15 AM

Location

1707 Cole Blvd, Redrocks conference room, Lakewood, CO 80401

Subjects and issues involved

An amendment to Sports Betting Rule 3 Applications, Investigations, and Licensure, that will allow the Division to begin accepting different forms of payment for background investigation deposits.

Statutory authority

Sections 44-30-201, C.R.S.; 44-30-203, C.R.S.; 44-30-302, C.R.S.; 44-30-507, C.R.S., and part 15 of article 30 of title 44, C.R.S.

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DEPARTMENT OF REVENUE

Division of Gaming

SPORTS BETTING REGULATIONS

1 CCR 207-2

BASIS AND PURPOSE FOR RULE 3

The purpose of Rule 3 is to enable applications, investigations and licensure as related to sports betting, including to establish and provide the specific information required on license applications; to establish license fees for each type of license; to establish investigation fees for certain applicants and deposit procedures for investigation fees; to establish procedures for conducting background checks on applicants and other interested persons and assessing the costs of such background checks; to require certain information regarding the premises the applicant wishes to be licensed, and to provide a procedure for approval of modifications of such premises; and to provide for the issuance of conditional licenses. The statutory basis for Rule 3 is found in sections 44-30-201, C.R.S.; 44-30-203, C.R.S.; 44-30-302, C.R.S.; 44-30-507, C.R.S., and part 15 of article 30 of title 44, C.R.S.

RULE 3 APPLICATIONS, INVESTIGATIONS AND LICENSURE *Effective 4/14/20*

3.5 Investigation and background check costs.

(1) Before any such investigations are conducted, each original applicant for a sports betting operator license or internet sports betting operator license, or vendor major license shall pay a deposit of $10,000 ~~by check made out to the Colorado Division of Gaming~~ to the sports betting fund. Upon notice to the applicant, all other license types may be required to pay a deposit to the sports betting fund in an amount, which, in the Director's discretion, is sufficient to enable the investigation to be conducted.

Notice of Proposed Rulemaking

Tracking number

2021-00741

Department

900 - Department of Law

Agency

902 - Administrator-Uniform Consumer Credit Code and Commission on Consumer Credit

CCR number

4 CCR 902-3

Rule title

COLORADO STUDENT LOAN EQUITY ACT RULES

Rulemaking Hearing

Date

12/20/2021

Time

10:00 AM

Location

Webinar only: https://us02web.zoom.us/j/84497015236?pwd=cUdsSnRvbDk0dGY2N0NPSjVSNlhMZz09

Subjects and issues involved

In the 2021 legislative session, the Colorado General Assembly passed the Colorado Student Loan Equity Act, sections 5-20-201, et seq., C.R.S. (CSLEA). The CSLEA requires private education lenders to register with the Administrator of the Uniform Consumer Credit Code in the Department of Law. Section 5-20-203, C.R.S. The Administrator issued emergency rules to implement the registration requirements. The Administrator held a stakeholder meeting on permanent rules on October 11, 2021. She is now proposing to issue permanent rules.

Statutory authority

The statutory authority for this rule includes, but is not limited to, sections 5-20-203 and 24-4-103, C.R.S.

Contact information

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DEPARTMENT OF LAW

Administrator – Uniform Consumer Credit Code

COLORADO STUDENT LOAN SERVICERS ACT RULES

4 CCR 902-3

Rule 4. Nonrefundable Registration Fees for Private Education Lenders

The amount of the registration fee for a private education lender is $1500. The amount of the registration fee may be reduced or increased periodically based upon the Administrator's determination of anticipated changes to the cost of administering Part 2 of the Colorado Student Loan Equity Act.

Rule 5. Registration Documents and Information Due Date

The documents and information required for registration in section 5-20-203(2)(b), C.R.S. shall be provided to the Administrator with the registration fee and annually thereafter on or before September 1.

A. Private education lenders are not required to provide the information required in section 5-20-203(2)(b)(I), (III), C.R.S., or the default rate for each school in section 5-20-203(2)(b)(IV), C.R.S. for refinanced private education loans.

Rule 6. Alternative Registration Process and Fee Structure for Public and Private Nonprofit Postsecondary Educational Institutions

A public or private nonprofit postsecondary educational institution may alternatively register with the Administrator by submitting a registration fee of $300 and providing the following documents and information by September 1 each year:

A. the volume of private education loans made annually by the public or private nonprofit postsecondary educational institution to private education loan borrowers in Colorado;

B. the default rate for private education loan borrowers in Colorado obtaining private education loans from the public or private nonprofit postsecondary educational institution;

C. a copy of each model promissory note, agreement, contract, or other instrument used by the public or private nonprofit postsecondary educational institution during the previous year to substantiate that a private education loan has been extended to a private education loan borrower or that a private education loan borrower owes a debt to the public or private nonprofit postsecondary educational institution;

D. for a private nonprofit postsecondary educational institution, documentation that establishes that it is a private nonprofit postsecondary educational institution, to be evaluated in the Administrator's discretion.

COLORADO DEPARTMENT OF LAW
Administrator – Uniform Consumer Credit Code
Statement of Basis, Specific Statutory Authority, and Purpose

4 CCR 902-3

In the 2021 legislative session, the Colorado General Assembly passed the Colorado Student Loan Equity Act, sections 5-20-201, *et seq.*, C.R.S. ("CSLEA"). The CSLEA requires private education lenders to register with the Administrator of the Uniform Consumer Credit Code in the Department of Law. Section 5-20-203, C.R.S. The Administrator issued emergency rules to implement the registration requirements. The Administrator held a stakeholder meeting on permanent rules on October 11, 2021. She is now proposing to issue permanent rules.

The statutory authority for this rule includes but is not limited to section 5-20-203, C.R.S.

Section 5-20-203(2)(a), C.R.S., requires that the Administrator determine the amount of fees required to register as a private education lender. The Administrator proposes Rule 4 to set the registration fees for private education lenders. The registration fee reflects the direct and indirect costs of administering Part 2 of the Colorado Student Loan Equity Act. That costs are estimated to be approximately $93,000 in FY2021-2022 and $110,000 in FY2022-2023 based on the addition of one full time employee to assist the Administrator in implementing Part 2 of the Colorado Student Loan Equity Act. The Administrator continues outreach to entities who may be subject to this new requirement. Based on currently available information, the Administrator estimates that there will be approximately 50-70 registrants. Based on these figures, the registration fee will be $1500 per registrant, which is an amount estimated to cover the costs of implementing Part 2 the Colorado Student Loan Equity Act. The amount of the initial registration fee and annual renewal fee may be reduced or increased periodically based upon the Administrator's determination of anticipated changes to the cost of administering the Student Loan Equity Act.

The Administrator also proposes Rule 5 to implement the requirement in section 5-20-203(2)(b), C.R.S., to provide the annual due date for documents and information required for registration, on or before September 1 each year. The Administrator believes that providing the information annually with registration is appropriate because it balances the costs of producing the information with the transparency goal of the statute. The Administrator also proposes to interpret the phrase "all schools at which the private education lender has provided private education loans to a private education loan borrower," section 5-20-203(2)(b)(I), C.R.S. to apply to initial private education loans but not to refinanced private education loans. The Administrator believes it is reasonable to interpret the phrase to exclude refinanced private education loans because those refinanced loans may not have been "provided" to a borrower at a particular school. Thus, the Administrator proposes Rule 5.A, which would provide that private education lenders are not required to provide the information required in section 5-20-203(2)

(b)(I), (III), C.R.S., or the default rate for each school in section 5-20-203(2)(b)(IV), C.R.S. for refinanced private education loans.

The Administrator also proposes Rule 6 to implement the alternative registration process and fee structure for public and private nonprofit postsecondary educational institutions in section 5-20-203(6), C.R.S. A public or private nonprofit postsecondary education institution may alternatively register with the Administrator by submitting a registration fee of $300. A public or private nonprofit postsecondary education institution by September 1 each year must also provide: the volume of private education loans made annually to private education loan borrowers in Colorado; the default rate for private education loan borrowers in Colorado obtaining private education loans from the public or private nonprofit postsecondary education institution; a copy of each model promissory note, agreement, contract, or other instrument used by the public or private nonprofit postsecondary education institution during the previous year to substantiate that a private education loan has been extended to a private education loan borrower or that a private education loan borrower owes a debt to the public or private nonprofit postsecondary education institution; and for a private nonprofit postsecondary educational institution, documentation that establishes that it is a private nonprofit postsecondary educational institution, to be evaluated in the Administrator's discretion. The Administrator believes that this alternative path balances the statutory intent in the registration requirement to collect and make public information about private education lenders in the state, while also recognizing the statutory provision for an alternative process and fee structure for public or private nonprofit postsecondary education institutions.

Notice of Proposed Rulemaking

Tracking number

2021-00732

Department

1507 - Department of Public Safety

Agency

1507 - Colorado State Patrol

CCR number

8 CCR 1507-56

Rule title

MOTORCYCLE OPERATOR SAFETY TRAINING (MOST) PROGRAM

Rulemaking Hearing

Date

12/15/2021

Time

09:30 AM

Location

TABLE MOUNTAIN INN, 1310 WASHINGTON AVE, GOLDEN CO 80401 AND ONLINE (TBA)

Subjects and issues involved

Pursuant to Section 43-5-502.5, CRS, the Chief of the Colorado State Patrol has authority to adopt rules affecting the administration and regulation of the Colorado MOST Program. The CSP seeks to amend these rules following both program and administrative rule reviews and in response to statutory changes arising out of the 2020 Colorado General Legislative Session having an impact upon the MOST Program. Specific amendments proposed are for purposes of clarifying CO MOST Program Instructor and Vendor Requirements; introducing CO MOST Instructor standards specific to the operation of the MOST Program within Colorado; to update existing definitions and terminology and update references throughout the rules to standardize references; to update information relevant to CO MOST Program Instructor applications, eligibility, and maintenance; to confirm program requirements applicable to both CO MOST Vendors and Instructors; and to update information relevant to referenced materials.

Statutory authority

43-5-501, 43-5-502, 43-5-502.5, 43-5-503, 43-5-505, CRS

Contact information

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DEPARTMENT OF PUBLIC SAFETY
DIVISION OF STATE PATROL
RULES AND REGULATIONS CONCERNING
THE MOTORCYCLE OPERATOR SAFETY TRAINING
(MOST) PROGRAM

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

As amended by Colorado SB 17-243 and codified as §43-5-502.5, CRS, the rights, powers, duties, and obligations of the Colorado Motorcycle Operator safety Training (MOST) Program transferred to the Chief of the Colorado State Patrol (CSP) from the Colorado Department of Transportation (CDOT), effective January 1, 2018. The CSP adopted new rules affecting the administration and regulation of the MOST Program consistent with this authority in August 2018.

The CSP seeks to amend the MOST rules following both program and administrative rule reviews and in response to statutory changes arising out of the 2020 General Legislative Session having an impact upon the MOST Program. The CSP is proposing amendments to 8 CCR 1507-56, the MOST Program Rules:

- Clarifying CO MOST Program Instructor and CO MOST Program Vendor Requirements;
- Introducing CO MOST Instructor standards specific to the operation of the MOST Program within Colorado;
- Updating existing definitions and introducing new definitions, standardizing references throughout these rules addressing results of statutory changes and clarifying the scope and use of CO MOST Program terms and verbiage;
- Updating information related to CO MOST Program Instructor applications, eligibility, and maintenance;
- Clarifying procedure applicable to the review of CO MOST Course applications and approvals; and
- Confirming that all MOST Vendors and Instructors participating in the CO MOST Program and providing or delivering any MOST Courses within Colorado must comply with all applicable terms, conditions, standards, and requirements established by these rules, the CO MOST PNP, applicable CO MOST Program approved Courses, and applicable state statutes.

The General Assembly has determined that the promotion of Motorcycle safety and awareness benefits the preservation of the public peace, health, and safety. The General Assembly has further declared that the support of safety courses designed to instruct Motorcycle operators and instructors is critical to the success of this goal. For this reason and other enumerated within the statute authorizing the CO MOST Program, it is necessary for these proposed rules and changes thereto to be adopted.

Colonel Matthew C. Packard, Chief **Date of Adoption**

Colorado State Patrol

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF STATE PATROL
RULES AND REGULATIONS CONCERNING
THE MOTORCYCLE OPERATOR SAFETY TRAINING
(MOST) PROGRAM

1. AUTHORITY

1.1. Pursuant to §43-5-502.5(2), CRS, the Chief of the Colorado State Patrol is authorized to adopt rules necessary for the administration of the MOST Program. ~~Pursuant to~~ CONSISTENT WITH §43-5-502 (1) (a) (III) (c), CRS, the Chief OF THE COLORADO STATE PATROL has authority to designate a program coordinator to implement and administer the MOST Program.

1.2. Pursuant to §43-5-502 (1) (a) (III) (d), CRS, rules necessary to carry out the MOST Program may be adopted CONSISTENT WITH ~~pursuant to~~ Article 4 of Title 24, CRS.

2. APPLICABILITY

2.1. These rules ~~shall~~ apply to all persons who operate as MOST Program Vendors, MOST Program Instructors, MOST Program Instructor Trainers, MOST Program students, and the MOST Program IN GENERAL, as it operates within ~~this state~~ COLORADO.

3. GENERAL DEFINITIONS

3.1. With respect to these rules, the following definitions are applicable THROUGHOUT unless otherwise indicated:

3.1.1. *"Administrative Expenses"* means expenses related to COLORADO MOST Program salaries, related benefits, and operating costs. Administrative operating costs ~~will~~ include:

3.1.1.1. Daily administrative costs incurred by the COLORADO MOST Program ADMINISTERED THROUGH THE COLORADO STATE PATROL, INCLUDING COPYRIGHT REVIEW OF MOST COURSES SUBMITTED FOR CONSIDERATION TO THE CO MOST PROGRAM;

3.1.1.2. Travel costs for business travel by MOST Program staff related to supporting the COLORADO MOST Program;

3.1.1.3. Purchasing or leasing of capital equipment by ~~CDPS~~ COLORADO STATE PATROL MOST PROGRAM staff for the COLORADO MOST Program THAT

ARE not otherwise secured by a Purchase Order, AGREEMENT, or contract;

3.1.1.4. Office supplies;

3.1.1.5. In-office printing, copying, form reproduction; and

3.1.1.6. Tuition and/or registration costs for MOST Program personnel attending activities related to the support or administration of the COLORADO MOST Program.

3.1.2. *"Advanced Rider Course (ARC)"* means any ~~m~~Motorcycle training course, other than a ~~BRC~~ BEGINNER OR INTERMEDIATE MOTORCYCLE INSTRUCTION COURSE, designed to improve upon existing knowledge, attitudes, habits, and skills of licensed ~~m~~Motorcycle riders, necessary for the safe operation of a Motorcycle.

3.1.3. **"***Advisory Board"* means the Motorcycle Operator Safety Advisory Board (MOSAB) established pursuant to §43-5-505, CRS.

3.1.4. **"***APPROVED BEGINNER/INTERMEDIATE MOST COURSE"* ~~*"Basic Rider Course (BRC)"*~~ means a Motorcycle instruction course APPROVED BY THE CO MOST PROGRAM designed to develop THE knowledge, attitudes, habits, and skills necessary for the safe operation of a Motorcycle. ~~To~~ TO qualify, a ~~BRC~~ BEGINNER OR INTERMEDIATE COURSE provided by a CO MOST PROGRAM Vendor must teach the requirements for issuing a course completion card which can be used to obtain a driver's license motorcycle endorsement. ~~Successful completion of a BRC may be used to obtain a motorcycle endorsement from the Colorado Department of Revenue (CDOR).~~

3.1.5. *"BEST PRACTICES"* MEANS GUIDELINES, IDEAS, OR TECHNIQUES CONFIRMED THROUGH APPLICABLE RESEARCH AND/OR RELEVANT PROFESSIONAL EXPERIENCE REPRESENTING ALTERNATIVE, APPLICABLE, PRACTICAL, AND PRUDENT PRACTICES AND METHODOLOGY PROMOTING EFFECTIVE AND RELIABLE RESULTS. ~~"CDOR" *means the Colorado Department of Revenue.*~~

3.1.6. *"CDOR"* means the Colorado Department of Revenue. ~~*"CDOT"* means the Colorado Department of Transportation.~~

3.1.7. **"***CDOT"* means the Colorado Department of Transportation. ~~*"CDPS"* means the Colorado Department of Public Safety.~~

3.1.8. *"CDPS"* means the Colorado Department of Public Safety. ~~*"Chief"* means the Chief of the Colorado State Patrol.~~

3.1.9. **"***CERTIFICATION"* MEANS OFFICIAL RECOGNITION, AFFIRMATION, OR APPROVAL OF STATUS THAT MAY BE EXPRESSED INTERCHANGEABLY AND TO THE SAME EFFECT WITHIN THESE RULES AS THE CERTIFICATION, RECOGNITION, AFFIRMATION OR APPROVAL OF THE SAME. AS APPLIED THROUGHOUT THESE RULES, CERTIFICATION IS OFFICIAL RECOGNITION, AFFIRMATION, OR APPROVAL

OF A MOST VENDOR, INSTRUCTOR, OR COURSE AS A CO MOST RECOGNIZED, AFFIRMED, OR APPROVED VENDOR, INSTRUCTOR, OR COURSE, BY THE CO MOST PROGRAM. SPECIFICALLY:

3.1.9.1. CERTIFICATION OF A COURSE IS THE OFFICIAL RECOGNITION, AFFIRMATION, OR APPROVAL OF A MOST MOTORCYCLE EDUCATION COURSE THAT HAS BEEN SUBMITTED TO MOST FOR EVALUATION AND HAS RECEIVED WRITTEN APPROVAL FOR USE AS A MOTORCYCLE LICENSE WAIVER ENDORSEMENT CLASS MEETING ALL APPLICABLE STATUTORY REQUIREMENTS AND IS CONSISTENT WITH THESE RULES.

3.1.9.2. CERTIFICATION OF AN INSTRUCTOR IS THE OFFICIAL RECOGNITION, AFFIRMATION, OR APPROVAL OF A MOST INSTRUCTOR WHO HAS APPLIED TO PERFORM AS A MOST COURSE INSTRUCTOR IN COLORADO FROM THE CO MOST PROGRAM. TO RECEIVE CERTIFICATION, RECOGNITION, AFFIRMATION, OR APPROVAL, A MOST INSTRUCTOR MUST MAINTAIN COMPLIANCE WITH APPLICABLE CO MOST PROGRAM APPROVED COURSE REQUIREMENTS, STATUTES, AND THESE RULES.

3.1.9.3. CERTIFICATION OF A VENDOR IS THE OFFICIAL RECOGNITION, AFFIRMATION, OR APPROVAL OF A MOST VENDOR WHO SEEKS TO ENTER INTO AGREEMENT WITH THE CO MOST PROGRAM TO SUPPORT CO MOST PROGRAM COURSE INSTRUCTION. TO RECEIVE CERTIFICATION, RECOGNITION, AFFIRMATION, OR APPROVAL, A MOST VENDOR MUST AGREE TO OPERATE CONSISTENT WITH THE TERMS AND CONDITIONS OF THE CO MOST VENDOR AGREEMENT, APPLICABLE STATUTES, AND THESE RULES.

3.1.10. *"Chief"* means the Chief of the Colorado State Patrol. AS MAY BE APPROPRIATE AND AS IS CONSISTENT WITH CSP AND CDPS POLICY, "CHIEF" ALSO INCLUDES THE DESIGNEES OF THE CHIEF. ~~*"CSP" means the Colorado State Patrol.*~~

3.1.11. *"CLASSROOM" MEANS A DESIGNATED AREA OR AREAS OR SPACE, VIRTUAL OR PHYSICAL, USED FOR THE PURPOSE OF CO MOST PROGRAM APPROVED COURSE ACADEMIC TRAINING AND INSTRUCTION.* ~~*"Contract Expenses" means expenses incurred by the MOST Program directly related to a contract or Purchase Order issued to a third party, expenses incurred to promote the MOST Program, and expenses related to program evaluation.*~~

3.1.12. *"COMPLETE CO MOST COURSE" MEANS A CO MOST PROGRAM APPROVED COURSE CONSISTING OF ACADEMIC INSTRUCTION, RANGE COURSE TRAINING, AND SKILLS DEVELOPMENT FOR THE PURPOSES OF MEETING INSTRUCTOR APPROVAL REQUIREMENTS SET FORTH WITHIN THESE RULES. TO RECEIVE CREDIT TOWARDS THE ANNUAL CO MOST INSTRUCTOR COURSE INSTRUCTION REQUIREMENT OF THREE CO MOST PROGRAM APPROVED COURSES, A CO MOST INSTRUCTOR MUST INSTRUCT THREE COMPLETE CO MOST PROGRAM APPROVED COURSES OR EQUAL OPPOSITE HALVES OF SIX CO MOST PROGRAM*

APPROVED COURSES. ~~—*"Eligible Student"* means any person who enrolls in a MOST Course or MOST Instructor Training Course and: 3.1.11.1. Is a resident of Colorado holding a valid driver's license, a minor driver's license, or instruction permit as authorized by §42-2-106, CRS; or 3.1.11.2. Is a member of the armed forces having moved to Colorado consequent to a permanent change of station basis, holding a valid driver's license from another state; or 3.1.11.3. Is an adult holding a valid driver's license from another sate that is eligible for a motorcycle license in that same state.~~

3.1.13. *"COURSE COMPLETION CARD"* MEANS THE CERTIFICATE OR CARD ISSUED TO A STUDENT UPON THE SUCCESSFUL COMPLETION OF A CO MOST PROGRAM APPROVED COURSE. THIS CARD OR CERTIFICATE MUST INCLUDE THE COURSE NAME, A LEGIBLE COURSE INSTRUCTOR SIGNATURE, THE DATE OF CARD OR CERTIFICATE ISSUE, THE COMPLETE NAME OF THE STUDENT AS IT APPEARS ON THE STUDENT'S STATE DRIVER'S LICENSES OR IDENTIFICATION CARD, AND MUST DISPLAY A UNIQUE, IDENTIFYING SERIAL OR CARD/CERTIFICATE ISSUE NUMBER. ~~*"Instructor Professional Development Workshop (PDW)"* means an instructor training education activity designed to improve knowledge, attitudes, habits, and skills of MOST instructors to improve and update the quality of MOST Courses consistent with best practices.~~

3.1.14. *"Contract Expenses"* means expenses incurred by the COLORADO MOST Program directly related to a contract, AGREEMENT, or purchase order issued to a third-party; expenses incurred to promote the MOST Program; and expenses RELATED TO THE OPERATION OF THE COLORADO MOST PROGRAM. ~~*"CSP"* means the Colorado State Patrol.~~

3.1.15. ~~**3.1.9.**~~ *"CSP"* means the Colorado State Patrol.

3.1.16 ~~**3.1.11.**~~ *"Eligible CO MOST COURSE Student"* means any person who enrolls in a CO MOST Course ~~or MOST Instructor Training Course~~and:

~~*"Motorcycle Operator Safety Training (MOST) Program"* means the safety training program created pursuant to §43-5-501, et. Seq., CRS. As used within these rules, MOST Program, MOST, Program, and Motorcycle Operator Safety Training Program are used interchangeably and to the same effect.~~

3.1.16.1. ~~**3.1.11.1.**~~ Is a resident of Colorado holding a valid driver's license, a ~~m~~MinorS' (AGE-RESTRICTED, UNDER 21-YEARS OF AGE) driver's license, VALID STATE ID, or instruction permit, as authorized by §42-2-106, CRS; or

3.1.16.2. ~~**3.1.11.2.**~~ Is a member of the armed forces having moved to COLORADO consequent to a permanent change of station basis, holding a valid driver's license issued by another state; or

3.1.16.3. ~~**3.1.11.3.**~~ Is an adult holding a valid driver's license from another state AND is eligible for a M~~m~~otorcycle license OR ENDORSEMENT in that same state.

3.1.17. *"ELIGIBLE CO MOST INSTRUCTOR TRAINING COURSE STUDENT"* MEANS ANY PERSON WHO ENROLLS IN AN COLORADO MOST PROGRAM APPROVED INSTRUCTOR TRAINING COURSE AND:

~~*"MOST Course" means any BRC or ARC officially recognized and approved by the MOST Program.*~~

3.1.17.1. IS A RESIDENT OF COLORADO HOLDING A VALID MOTORCYCLE-ENDORSED DRIVER'S LICENSE AS PROVIDED BY §42-2-106, CRS; OR

3.1.17.2. IS A MEMBER OF THE ARMED FORCES HAVING MOVED TO COLORADO SUBSEQUENT A PERMANENT CHANGE OF STATION BASIS, HOLDING A VALID DRIVER'S LICENSE ISSUED BY ANOTHER STATE.

3.1.18. ~~**3.1.12.**~~ *"Instructor Professional Development Workshop (PDW)"* means a training educational activity designed to improve knowledge, attitudes, habits, and skills of CO MOST Instructors to improve and update the quality of CO MOST PROGRAM APPROVED Courses consistent with best practices. ~~*"MOST Fund" means the fund authorized by §43-5-504, CRS.*~~

3.1.19. *"LEAP YEAR"* MEANS A CALENDAR YEAR RUNNING FROM JANUARY 1ST THROUGH DECEMBER 31ST, HAVING 29 DAYS IN FEBRUARY AND OCCURRING ONCE EVERY FOUR (4) CALENDAR YEARS. ~~*"MOST Instructor," MOST Program Instructor" or "Instructor" means an individual satisfying the same requirements of these rules, in good standing with the state MOST Program requirements, certified or affirmed by the CSP to teach MOST Courses.*~~

3.1.20. ~~**3.1.13.**~~ *"Mobile Training"* means the transport to and FROM AND THE setting up of all CO MOST Program APPROVED training, including equipment, personnel, and classroom materials at Temporary Training Sites to provide training in under-served areas of the state not having Training Sites or providing CO MOST Program APPROVED Courses ~~or MOST Instructor Training Courses~~. ~~*"MOST Instructor Trainer" means an individual satisfying the requirements of these rules, in good standing with the state MOST Program requirements, certified or affirmed by the CSP to prepare MOST Instructors to each MOST Courses*~~ MOBILE TRAINING ALSO MEANS TRAINING PROVIDED BY A CO MOST PROGRAM CERTIFIED- VENDOR AT TWO OR MORE TEMPORARY TRAINING SITES WITH THE EXCEPTION THAT A CO MOST PROGRAM CERTIFIED VENDOR MAY PROVIDE MOBILE TRAINING USING A SINGLE TEMPORARY TRAINING SITE DURING THE FIRST YEAR IT PROVIDES MOBILE TRAINING.

3.1.21. ~~**3.1.14.**~~ *"MOST COURSE" OR "CO MOST APPROVED COURSE"* means any ~~BRC~~ BEGINNER OR INTERMEDIATE MOST COURSE officially recognized and approved by the CO MOST Program. ~~*"MOST Program Coordinator" or "Program Coordinator"* means the individual to whom the Chief has delegated responsibility of the management of the MOST Program.~~

3.1.22. ~~**3.1.16.**~~ *"MOST Fund" OR "CO MOST FUND"* means the fund authorized by §43-5-504, CRS. ~~*"MOST Program Office"* means the main office for the MOST Program located at the CSP.~~

3.1.23. ~~**3.1.17.**~~ *"MOST Instructor," "MOST Program Instructor," "CO MOST INSTRUCTOR," "CO MOST PROGRAM INSTRUCTOR" OR "Instructor"* means an individual, satisfying APPLICABLE requirements of these rules, WHO IS in good standing with ~~the~~ CO MOST Program requirements, certified ~~or affirmed~~ by the ~~CSP~~ CO MOST PROGRAM to teach CO MOST PROGRAM APPROVED Courses. ~~*"MOST Program Instructor Certification"* means the certification provided to a person to operate as a MOST Program Instructor in Colorado by the CSP.~~

3.1.24. ~~**3.1.18.**~~ *"MOST Instructor Trainer~~ING CANDIDATE" OR "CO MOST INSTRUCTOR TRAINING CANDIDATE"* means an individual satisfying the requirements of these rules, in good standing with ~~the state~~ CO MOST Program requirements, WHO, UPON SUCCESSFUL COURSE COMPLETION, MAY APPLY FOR CERTIFICATION FROM THE CO MOST PROGRAM TO INSTRUCT CO MOST PROGRAM APPROVED COURSES. ~~certified or affirmed by the CSP to prepare MOST Instructors to teach MOST Courses. *"MOST Program Vendor Certification"* means the certification provided to a person to operate as a MOST Program Vendor in Colorado by the CSP.~~

3.1.25. ~~**3.1.19.**~~ *"MOST Instructor Training Course" OR "CO MOST PROGRAM APPROVED INSTRUCTOR TRAINING COURSE"* means an approved course of instruction which prepares AN INSTRUCTOR CANDIDATE to teach CO MOST PROGRAM APPROVED COURSE~~(S)~~. ~~*"MOST Program Vendor," "MOST Vendor" or "Vendor"* means a person that offers a Motorcycle Operate Safety Program meeting the standards promulgated by the CSP.~~

3.1.26. ~~**3.1.20.**~~ *"MOST Program Coordinator," "CO MOST PROGRAM COORDINATOR," OR "Program Coordinator"* means the individual to whom the CHIEF has delegated responsibility ~~of~~ FOR the ~~management~~ ADMINISTRATION of the CO MOST Program. ~~*"Motorcycle"* means a motor vehicle designed with handlebars or any other similarly connected device to the front wheels of the vehicle to steer. 3.1.20.1. A Motorcycle defined within these rules will mean a motor vehicle designed to travel with three or less wheels in contact with the ground. 3.1.20.2. For purposes of these rules, a Motorcycle will not include any farm tractor, low-speed electric vehicle, or low-power scooter, as defined within §42-1-102 (55), CRS.~~

3.1.27. ~~**3.1.21.**~~ *"MOST Program Office" OR "CO MOST PROGRAM OFFICE"* means the main office for the CO MOST Program located at the CSP. ~~*"Person" means an individual, a corporation, a government or governmental subdivision or agency, a partnership, an association, or any other legal entity, with the exception that separate divisions of the same corporation may, at their request, be treated as separate persons.*~~

3.1.28. ~~**3.1.22.**~~ *"MOST Program Instructor Certification" OR "CO MOST PROGRAM INSTRUCTOR CERTIFICATION"* means the certification provided to a person to operate as a CO MOST Program Instructor ~~in Colorado by~~ FROM the CO MOST PROGRAM ~~CSP~~. ~~*"Personally Identifiable Information (PII)" means sensitive, personal information that can be used on its own or with other information to identify, contact, or locate a single person.~~ SEE DEFINITION 3.1.9. OF THESE RULES FOR ADDITIONAL GUIDANCE.

3.1.29. ~~**3.1.24.**~~ *"MOST Program Vendor," "MOST Vendor," "CO MOST PROGRAM VENDOR," "COLORADO MOST PROGRAM VENDOR," "CO MOST VENDOR," OR "Vendor"* means *a* person that offers MOTORCYCLE TRAINING MEETING APPLICABLE CO MOST PROGRAM REQUIREMENTS SET FORTH, REFERENCED, AND/OR ADOPTED BY THESE RULES. ~~a Motorcycle Operator Safety Program meeting standards promulgated by the CSP.~~ ~~*"Quality Assurance Review (QAR)" means actions through which the CSP or its agents evaluate the compliance of MOST Program Vendors or MOST Instructors with applicable statutes, these rules, applicable contractual obligations, and MOST Program directives and initiatives.*~~

3.1.30. *"MOST Program Vendor Certification" OR "CO MOST PROGRAM VENDOR CERTIFICATION"* means the certification, AFFIRMATION, RECOGNITION, AND/OR APPROVAL provided to a person to operate as a CO MOST Program Vendor ~~IN COLORADO~~ FROM the CO MOST PROGRAM ~~CSP~~. SEE DEFINITION 3.1.9. OF THESE RULES FOR ADDITIONAL GUIDANCE. ~~*"Reinstatement" means the recertification of a MOST Program Vendor, MOST Instructor Trainer or Instructor, by the CSP subsequent to any cancellation, expiration, denial, limitation, suspension, or revocation of a certification consistent with applicable law and these rules.*~~

3.1.31. *"MOTOR VEHICLE RECORD (MVR)" OR "MOTOR VEHICLE OPERATOR'' RECORD"* MEANS AN OFFICIAL DOCUMENT PRODUCED BY AN IDENTIFIED STATE GOVERNMENTAL ENTITY DETAILING THE MOTOR VEHICLE OPERATION AND/OR MOTOR VEHICLE OPERATION VIOLATION HISTORY FOR A PERSON ISSUED OR PREVIOUSLY ISSUED A STATE LICENSE TO OPERATE A MOTOR VEHICLE. MAY BE KNOWN BY ANOTHER NAME (I.E., ABSTRACT, DRIVER'S RECORD, ETC.) IN STATES OUTSIDE OF COLORADO. ~~*"Temporary Training Site" means non-permanent locations at which MOST Courses and MOST Instructor Training Courses are provided for no more than 10 consecutive weeks during any individual state fiscal year. 3.1.30.1. Temporary Training Sites may be used multiple times over a*~~

~~single state fiscal year, but never for more than 10 weeks consecutively. 3.1.30.2. All equipment brought to and set up at a Temporary Training Site must be removed from the Temporary Training Site must be removed from the Temporary Training Site, along with any waste generated, upon completion of any Temporary Training Site period.~~

3.1.32. ~~**3.1.25.1.**~~ *"Motorcycle"* means a motor vehicle designed with handlebars or any other similarly connected device to the front wheel(s) of the vehicle to steer.

3.1.32.1. ~~**3.1.25.1.**~~ A Motorcycle defined within these rules will mean a motor vehicle designed to travel with three or less wheels in contact with the ground.

3.1.32.2. ~~**3.1.25.2.**~~ For purposes of these rules, a Motorcycle will not include any farm tractor, low-speed electric vehicle, or low-power scooter, as identified within §42-1-102 (55), CRS.

3.1.33. ~~**3.1.14.**~~ *"Motorcycle Operator Safety Training (MOST) Program" OR "CO MOST"* means the MOTORCYCLE Safety Training Program created pursuant to §43-5-501, et. seq., CRS. As used within these rules, MOST Program, MOST, CO MOST, Program, and Motorcycle Operator Safety Training Program, are used ~~interchangeably and to the same effect~~.

3.1.34. ~~**3.1.26.**~~ *"Person"* means an individual, a corporation, a government or governmental subdivision or agency, a partnership, an association, or any other legal entity, with the exception that separate divisions of the same corporation may, at their request, be treated as separate persons. ~~*"Training Site" means a permanent, non-temporary site for training having at least one MOST Course and classroom facility meeting the requirements of these rules, provided by a MOST Program Vendor.*~~

3.1.35. *"PNP" OR "CO MOST PNP"* MEANS THE CO MOST PROGRAM DOCUMENT AVAILABLE TO THE PUBLIC AND PROVIDED THROUGH THE CO MOST OFFICE, OUTLINING EXPECTATIONS, GUIDELINES, AND REQUIREMENTS FOR CERTIFIED AND PARTICIPATING VENDORS, INSTRUCTORS, STUDENTS, AND CO MOST PROGRAM PARTNERS. THE CO MOST PNP ENCOMPASSES AS PART INFORMATION RELEVANT TO QUALITY ASSURANCE REVIEWS (QARs), SETTING FORTH POLICIES, PROCEDURES AND EXPECTATIONS SUPPORTING QARs CONSISTENT WITH THESE RULES AND CO MOST PROGRAM GOALS.

3.1.36. *"PROGRAM AGREEMENT"* MEANS THE MOTORCYCLE OPERATOR TRAINING (MOST) PROGRAM AGREEMENT BETWEEN THE CO MOST PROGRAM AND CERTIFIED CO MOST PROGRAM VENDORS.

3.1.37. *"RANGE"* MEANS A MOTORCYCLE COURSE AREA OF ASPHALT, PAVEMENT, OR CONCRETE THAT IS APPROVED OF BY ONE OR MORE CO MOST PROGRAM APPROVED COURSE PROVIDERS AND RECOGNIZED BY THE CO MOST PROGRAM FOR MOTORCYCLE (TWO AND/OR THREE-WHEELED) TRAINING, HAVING

SUFFICIENT RUN-OFF AREA AROUND THE PERIMETER AND ANY/ALL OBSTACLES OR BARRIERS; ADEQUATE RUN-UP AND RUN-OUT SPACE; DEFINED FOR A MAXIMUM LEVEL OF STUDENTS; AND DESIGNED, PAINTED, AND AUDITED CONSISTENT WITH APPLICABLE CO MOST PROGRAM APPROVED COURSE STANDARDS.

3.1.38. ~~**3.1.28.**~~ *"Quality Assurance Review (QAR)"* means actions through which the CSP or its agents evaluate the compliance of CO MOST Program Vendors or CO MOST PROGRAM Instructors with applicable statutes, these rules, THE CO MOST PNP, applicable CONTRACTUAL OR AGREEMENT obligations, APPLICABLE CO MOST PROGRAM APPROVED COURSES, and CO MOST Program directives, POLICIES, and initiatives.

3.1.39. ~~**3.1.29.**~~ *"Reinstatement"* means the recertification of a CO MOST Program Vendor, CO MOST Instructor Trainer, or CO MOST Instructor by the CHIEF AND THE ~~CSP~~ CO MOST PROGRAM subsequent to any cancelation, expiration, denial, limitation, suspension, or revocation of a certification consistent with applicable law, CO MOST CONTRACTS OR AGREEMENTS, APPROVED CO MOST PROGRAM APPROVED COURSES, these rules, AND OTHER APPLICABLE CO MOST PROGRAM DEVELOPED CRITERIA (INCLUDING THE CO MOST PNP AND/OR CO MOST ACCOUNTABILITY AND RESOLUTION MATRIX).

3.1.40. *"RESIDENT"* MEANS A RESIDENT OF A STATE FOR MOTOR VEHICLE LICENSING AND/OR MOTORCYCLE ENDORSEMENT OR LICENSING PURPOSES. AS APPLIED WITHIN THESE RULES, THE DEFINITION OF A COLORADO RESIDENT WILL BE CONSISTENT WITH THE DEFINITION OF RESIDENT SET FORTH WITHIN §42-1-102 (81), CRS.

3.1.41. *"SEXUAL HARASSMENT AND DIVERSITY TRAINING"* MEANS ANNUAL TRAINING AND UPDATES THERETO PROVIDED OR APPROVED FOR USE BY THE CO MOST PROGRAM. TO MAINTAIN CO MOST PROGRAM CERTIFICATION, CO MOST PROGRAM INSTRUCTORS MUST COMPLETE THIS TRAINING.

3.1.42. ~~**3.1.30.**~~ *"Temporary Training Site"* means non-permanent locations WHEREBY, WITH LIMITED EXCEPTION, NO STRUCTURE IS TO REMAIN FOR MORE THAN 10 WEEKS OUT OF A SINGLE STATE FISCAL YEAR THAT HOUSES OR STORES MOTORCYCLES OR OTHER EQUIPMENT, at which CO MOST APPROVED Courses and CO MOST APPROVED Instructor Training Courses are provided ~~for no more than 10 consecutive weeks during any SINGLE State Fiscal Year~~.

3.1.42.1. ~~**3.1.30.1.**~~ Temporary Training Sites may be used multiple times over a single State Fiscal Year, but never for more than 10 weeks consecutively WITHOUT PRIOR PERMISSION FROM THE CO MOST PROGRAM.

3.1.42.2. ~~**3.1.30.2.**~~ All equipment brought to ~~a~~ set up at a Temporary Training Site must be removed from the Temporary Training Site, along

with any waste generated, upon completion of any Temporary Training Site period.

3.1.43. ~~**3.1.31.**~~ "*Training Site*" means a CO MOST COURSE APPROVED AND CO MOST PROGRAM AFFIRMED permanent, non-temporary site for training having at least one (1) ~~MOST~~ CO MOST APPROVED RANGE Course and THE ABILITY TO PROVIDE CLASSROOM INSTRUCTION CONSISTENT WITH THESE RULES. ~~classroom facility meeting the requirements of these rules provided by a MOST Program Vendor.~~

3.1.44. ~~**3.1.32.**~~ "*Underserved Areas of the State*" means locations where the CSP determines the access of residents to CO MOST Program APPROVED training is restricted due to distance OR PROGRAM AVAILABILITY.

4. CSP CO MOST PROGRAM ADMINISTRATION

4.1. In administering the CO MOST Program, the CSP will:

4.1.1. Establish standards and REVIEW ~~approve~~ curriculaS for CO MOST PROGRAM COURSE APPROVAL; ~~the certifications necessary for CO MOST Courses;~~

4.1.2. Manage the MOST Fund for the implementation of the CO MOST Program;

4.1.3. Maintain current records of CO MOST CERTIFIED Instructors, confirming compliance with statutory requirements established by §43-5-503, CRS;

4.1.4. Oversee all CO MOST Program Vendor Certifications and ~~contracts~~ AGREEMENTS with CO MOST Program Vendors providing training services under the CO MOST Program;

4.1.5. ~~Oversee and finalize~~ ACKNOWLEDGE AND AFFIRM approval of all CO MOST Program Training Sites;

4.1.6. COORDINATE ~~arrange~~ and review QARs of CO MOST Program APPROVED Training Sites, Vendors, and Instructors, assessing compliance with these rules, applicable CO MOST Program AGREEMENT ~~contractual~~ obligations, APPLICABLE CO MOST PROGRAM APPROVED COURSES, THE CO MOST PNP, and applicable state laws;

4.1.7. Publish a current record of ~~certified~~ CO MOST PROGRAM CERTIFIED Instructors monthly, CONSISTENT WITH THE CO MOST PROGRAM AGREEMENT; ~~directly to the CDOR and to the publish through the CSP MOST Program website.~~

4.1.8. Collaborate AS MAY BE NECESSARY with the CDOR annually to maintain information on the number of Motorcycle endorsements issued on Colorado Driver's Licenses;

4.1.9. Establish and maintain a system tracking CO MOST Program performance data, including data on Motorcycle accidents, injuries, and fatalities, among persons having completed CO MOST Program APPROVED ~~training~~ COURSES;~~.~~

4.1.10. Prepare an annual report on the effectiveness of the CO MOST Program, the availability of CO MOST PROGRAM APPROVED Training throughout the state, current training costs, and other relevant performance measures as ARE determined by the CO MOST Program; ~~.~~

4.1.11. Establish and maintain an evaluation system of staff, CO MOST PROGRAM CERTIFIED OR APPROVED Vendors, INSTRUCTORS, and QAR Personnel, operating pursuant to the CO MOST Program for purposes of assessing and improving program performance; and

4.1.12. Ensure that CO MOST PROGRAM APPROVED Courses are conducted safely and consistent with best practices.

5. CO MOST PROGRAM EXPENDITURES

5.1. The CO MOST Program Office will make use of funds as allocated pursuant to §43-5-504, CRS, to implement the CO~~olorado~~ MOST Program in compliance with the state fiscal rules.

5.1.1. CO MOST PROGRAM ADMINISTRATIVE EXPENSES. The CO MOST Program Office will spend no more than the amount specified by §43-5-503 (1) (e), CRS, towards administrative costs. Within the statutorily specified amount AND WITH CONSIDERATION GIVEN TO MOSAB AND OTHER STAKEHOLDER COMMUNICATIONS, the CO MOST Program Office may use available CO MOST Program Funds for reasonable and necessary administrative expenses~~, as defined within these rules~~.

5.1.2. CO MOST PROGRAM CONTRACT EXPENSES. Contract expenses differ from CO MOST Program Administrative expenses and are as defined within these rules. The CO MOST Program Office may use CO MOST Program Funds for reasonable and necessary contract expenses, to include:

5.1.2.1. Expenses incurred to promote the CO MOST Program, including public relations expenses, banners, advertising, and CO MOST program promotional materials~~,~~ as ordered ~~by~~ THROUGH THE CSP CO MOST PROGRAM; and

5.1.2.2. Those expenses related to CO MOST Program evaluation, meetings involving external stakeholders, interested parties, and partners, and those related to CO MOST Program awareness.

5.2. CO MOST PROGRAM CONTRACT EXPENSES. CO MOST Program Vendor reimbursements include expenses directly related to a contract, AGREEMENT, or Purchase Order issued to a CO MOST Program Vendor or third-party for the purchase of goods and/or services, NON-ADMINISTRATIVE CO MOST PROGRAM OPERATION

EXPENSES, or approved CO MOST Program-related travel expenses for Mobile Training conducted at Temporary Training Sites WITHIN COLORADO by CO MOST Vendors.

5.2.1. ~~Contracts~~ AGREEMENTS between the CO MOST Program and CO MOST Program CERTIFIED Vendors or third-parties will be for a period no longer than one (1) state fiscal year, subject to the availability of monies in the Fund.

5.2.2. Where required by the state fiscal rules, ~~contracts~~ AGREEMENTS between the CO MOST Program and MOST Program Vendors or third-parties will utilize a Purchase Order.

5.2.3. MOST Program Vendors and other third-parties ENTERING INTO AGREEMENTS OR contracting with the CO MOST Program will submit MOST Vendor information, as applicable, and update tax information annually, as appropriate.

5.2.4. A MOST Vendor reimbursement request arising out of approved CO MOST Program-related travel expenses for Mobile Training, as defined within these rules, must be submitted in writing to the CO MOST Program Office, consistent with these rules and THE state fiscal rules.

5.2.4.1. A request for approved CO MOST Program travel or Mobile Training expenses by a MOST Vendor may be calculated pursuant to ~~state~~ COLORADO fiscal rules, current ~~state~~ COLORADO-adopted rates for per diem meal costs and daily hotel rates, or actual costs incurred, whichever amount is less.

5.2.4.2. Following review and approval, the CO MOST Program Office will allocate funds for a CO MOST Vendor's approved program-related travel or Mobile Training Expenses.

5.2.5. Approval or denial of a request for reimbursement will be based upon criteria set forth within these rules and APPLICABLE CO MOST PROGRAM DOCUMENTS, in addition to THE availability of funding to satisfy approved reimbursement requests.

5.2.6. Failure of a CO MOST Vendor to provide documentation adequate to substantiate the reimbursement requested for approved CO MOST Program-related travel or Mobile Training may result in denial of the request for reimbursement.

5.2.7. If a CO MOST Program Vendor disagrees with the decision of the CO MOST Program Office in response to a request for reimbursement, a CO MOST Program Vendor may:

5.2.7.1. Submit a written request for additional review of the decision of the Chief ~~or his or her designee~~ within two weeks of receiving notification from the CO MOST Program Office.

5.2.7.2. The Chief ~~or his or her designee~~ will issue a decision within two weeks of the date of the receipt of a CO MOST Vendor's written request to review a reimbursement request decision by the CO MOST Program Office.

5.2.7.3. The decision of the Chief ~~or his or her designee~~ will constitute a final agency action with respect to the reimbursement request at issue and will be subject to judicial review as described within §24-4-106, CRS.

6. ~~CSP~~ CO MOST PROGRAM VENDORS

6.1. CO MOST PROGRAM VENDOR APPLICATION REQUIREMENTS. Persons seeking participate as MOST Vendors in the CO ~~CSP~~ MOST Program~~:~~

~~**6.1.1.** M~~must obtain ~~a MOST Program~~ Vendor Certification FROM THE ~~CSP~~ CO MOST PROGRAM prior to offering any CO MOST PROGRAM APPROVED Courses IN COLORADO. ONLY ACTIVE CERTIFIED MOST VENDORS CAN REPRESENT AS A CO MOST PROGRAM VENDOR AND/OR SCHOOL AND RECEIVE CO MOST APPROVED COURSE COMPLETION CARDS TO PROVIDE TO STUDENTS UPON SUCCESSFUL COURSE COMPLETION.

~~**6.1.1.1.** MOST Program Vendors with certifications in good standing and in compliance with 2 CCR 601-23 and issued by the CDOT prior to January 1, 2018, will remain valid as if issued by the CSP until the date of expiration, or a failure to remain in good standing with these rules.~~

~~**6.1.1.2.** After January 1, 2019, a Vendor must obtain a MOST Program Vendor Certification from the CSP prior to offering any MOST Program Courses.~~

6.1.1. ~~**6.1.1.3.**~~ Vendor Certification will be for a term not exceeding one (1) year and will expire NO LATER THAN ~~on~~ June 30th of the year following the effective date of issue.

6.1.2. ~~**6.1.1.4.**~~ Vendor will receive a written response as to the approval of any CO MOST PROGRAM VENDOR Application submitted within ~~three (3)~~ ONE (1) calendar month of the date of application receipt by the ~~CSP~~ CO MOST Program Coordinator. ~~Vendor must make the Vendor Certification available for review upon request.~~

6.2. CO MOST PROGRAM VENDOR ~~CERTIFICATION~~ MAINTENANCE. To maintain AS A CERTIFIED, ACTIVE CO MOST Program Vendor, A VENDOR must:

~~**6.2.1.** Adhere to 2 CCR 601-23 until the effective date of these rules, 8 CCR 1507-56, and adhere to applicable state law and existing contractual agreements between the MOST Program Vendor and the state.~~

6.2.1. ~~**6.2.2.** Following the effective date of these rules, a~~ Adhere to 8 CCR 1507-56, the CO MOST PROGRAM rules and regulations, AND OPERATE CONSISTENT WITH AND IN COMPLIANCE WITH THE TERMS OF AGREEMENTS BETWEEN THE STATE AND CERTIFIED CO MOST PROGRAM VENDORS, APPLICABLE LAW, THE CO

MOST PNP, AND APPLICABLE PROVISIONS OF CO MOST APPROVED PROGRAM COURSES. ~~concerning the Motorcycle Operator Safety Training (MOST) Program, and adhere to applicable state law and existing contractual agreements between the MOST Program Vendor and the state.~~

6.2.2. ~~**6.2.3.**~~ Use Certified CO MOST Program Instructors ~~and require instructors~~ SATISFYING CO MOST INSTRUCTOR REQUIREMENTS SET FORTH WITHIN THESE RULES AND REQUIRE CO MOST INSTRUCTORS to maintain compliance with §43-5-503, CRS, AND APPLICABLE CO MOST PROGRAM APPROVED COURSES. CO MOST PROGRAM VENDORS MUST report~~ing~~ any KNOWN INSTRUCTOR violation ~~thereof~~ OF THE AFOREMENTIONED immediately to the CO MOST Program Office.

6.2.3. ~~**6.2.4.**~~ Provide and maintain AN approved CO MOST Program Training Site or Sites.

6.2.4. COMPLETE ATTENDANCE OF THE ANNUAL CO MOST PROGRAM VENDOR CONFERENCE CONSISTENT WITH THE TERMS AND CONDITIONS SET FORTH WITHIN THE CO MOST PROGRAM AGREEMENT.

6.2.5. Cooperate with all QARs arranged ~~by~~ THROUGH the CO MOST Program Office of any Training Site or Sites.

6.2.6. Comply with remediation actions and other directives as required by ~~CSP~~ THE CO MOST PROGRAM.

6.2.7. Maintain all required CO MOST Program records, including student records, for a period of at least three (3) years, providing these records for auditing by the CSP or its agents upon request CONSISTENT WITH THE CO MOST VENDOR AGREEMENT AND OTHER APPLICABLE CO MOST PROGRAM DOCUMENTS. EACH ~~S~~student record~~s~~ must include:

6.2.7.1. A copy of their signed waiver, completed ~~by the student~~ prior to THE STUDENT beginning the course;

6.2.7.2. The full name of the student, exactly as it appears on the student's STATE driver's license, ~~or~~ permit, or IDENTIFICATION, AND THE LICENSE, PERMIT OR STATE IDENTIFICATION NUMBER;

6.2.7.3. The student's date of birth;

6.2.7.4. The student's mailing address, county of residence, email address, and phone number;

6.2.7.5. ~~The name and number of a person to contact on behalf of the student in the event of emergency.~~ The results of the student's classroom and Range training, complete with a determination as to whether or not the student successfully completed training;

6.2.7.6. Course starting and ending date(s);

6.2.7.7. ~~Copies of incident reports involving the student if any;~~ EVIDENCE OF SUCCESSFUL COURSE COMPLETION (CERTIFICATE, COMPLETION CARD, ETC.), BEARING THE APPLICABLE COURSE NUMBER AND OTHER INFORMATION AS MAY BE REQUIRED BY THESE RULES;

6.2.7.8. Copies of incident reports involving ~~the~~ A student, if any; ~~The MOST Program Vendor's name, email address, mailing address, phone number, and range location; and;~~

6.2.7.9. ~~The~~ A CO MOST Program Vendor's name, email address, mailing address, phone number, and Range location; and

6.2.7.10. The name(s) and THE ASSIGNED CO MOST PROGRAM IDENTIFICATION ~~Certification~~ number(s) for any CO MOST Program Instructor(s) RESPONSIBLE FOR A CO MOST STUDENT'S COURSE OF INSTRUCTION.

6.2.8. The CSP will retain any student records and will not release them to third-parties absent an Open Records Request, contract, AGREEMENT, or as required by law, and will ~~be~~ subject RELEASED RECORDS to redaction as appropriate to protect any PII. Any student records retained by the CSP ON BEHALF OF THE CO MOST PROGRAM may be used to evaluate and analyze the effectiveness of the CO MOST Program. RECORDS WILL BE MAINTAINED CONSISTENT WITH APPLICABLE STATE DATA RETENTION GUIDELINES.

6.3. **CO MOST PROGRAM VENDOR TRAINING AND MOTORCYCLE REQUIREMENTS.** It is the responsibility of a CO MOST Program Vendor to ensure that all Motorcycles used for CO MOST Courses meet the requirements of these rules, APPLICABLE CO MOST PROGRAM APPROVED COURSES, and are inspected and approved for use by the CO MOST Program Instructor prior to each training session.

6.3.1. Motorcycles used for instruction must be intended for street use by the manufacturer.

6.3.2. One (1) Motorcycle must BE available ~~for~~ PER each student participating in that ~~r~~Range session of aN CO MOST PROGRAM APPROVED ~~BRC~~ Course.

6.3.3. CO MOST Vendor supplied Motorcycles must be maintained AND in ~~a~~ safe operating condition ~~by the MOST Program Vendor.~~

6.3.3.1. THIS INCLUDES ANY AND ALL ~~Program Vendors are responsible for the~~ repairs and maintenance of all CO MOST PROGRAM Vendor Motorcycles provided for use in ~~the~~ AN CO MOST Program, includeING REQUIRED tire replacement.

6.3.4. A CO MOST Program Instructor will immediately notify a CO MOST Program Vendor of any Motorcycle not meeting the requirements of these rules~~,~~ or that is otherwise determined unsafe for use, and reject the Motorcycle for use in AN

~~the~~ CO MOST Program APPROVED COURSE ~~Program~~ UNTIL SUCH TIME THE MOTORCYCLE BECOMES COMPLIANT WITH THE REQUIREMENTS OF THESE RULES. ~~A MOST Program Instructor may require a student electing to use his or her own Motorcycle to: 6.3.4.1. Provide proof that the personally provided Motorcycle has been inspected and found to satisfy safety requirements required to participate in a MOST Course; 6.3.4.2. Provide proof of ownership or written permission of the owner of a personal Motorcycle; 6.3.4.3. Provide proof of adequate liability insurance; 6.3.4.4. Sign a waiver of liability for any damage or injury arising out of, from, or caused by operation of the personal Motorcycle; and 6.3.4.5. Inform a student that the transportation of his or her Motorcycle to and from the Training Site should be consistent with all applicable state laws. 6.3.4.6. An Instructor has the discretion to deny use of a personally provided Motorcycle by a student participating in a MOST Course.~~

6.3.5. ~~**6.3.4.**~~ A CO MOST Program ~~Instructor~~ VENDOR ~~may~~ WILL require a student electing to use his or her own TWO OR THREE-WHEELED Motorcycle, WHICHEVER MAY BE APPLICABLE, to: ~~Motorcycles used for a two-wheeled Motorcycle MOST Course must abide by the standards set forth in the applicable, current, and approved, MOST curriculum in which the Motorcycle is being used.~~

6.3.5.1. ~~**6.3.4.1.** Provide proof that the personally provided Motorcycle has been inspected and found to satisfy safety requirements required to participate in a MOST Course;~~ ALLOW THE MOST PROGRAM INSTRUCTOR TO COMPLETE A SAFETY INSPECTION TO VERIFY THAT THE MOTORCYCLE PROVIDED BY THE STUDENT SATISFIES APPLICABLE SAFETY STANDARDS AND IS INTENDED FOR STREET USE BY THE MANUFACTURER;

6.3.5.2. ~~**6.3.4.2.**~~ Provide proof of ownership or written permission of the owner of THE personal Motorcycle;

6.3.5.3. ~~**6.3.4.3.**~~ Provide proof of adequate liability insurance;

6.3.5.4. ~~**6.3.4.4.**~~ Sign a waiver of liability for any damage or injury arising out of, ~~form~~ from, or caused by operation of the personal TWO OR THREE-WHEELED Motorcycle; and

6.3.5.5. ~~**6.3.4.5.**~~ CONFIRM ~~inform~~ WITH THE ~~a~~ student that the transportation of ~~his or her~~ THE PERSONALLY PROVIDED Motorcycle by a student participating in a CO MOST PROGRAM APPROVED Course to and from the Training Site should be consistent with all applicable state laws.

6.3.6. A CO MOST Instructor MAY EXERCISE PROFESSIONAL ~~has the~~ discretion ~~to~~ AND deny THE use of a personally provided Motorcycle by a student participating in a CO MOST PROGRAM APPROVED Course. ~~Motorcycles used for a three-wheel MOST Course must; **6.3.6.1.**Be intended for street use by the manufacturer;~~

~~**6.3.6.2.** Be maintained in safe operating condition;~~ ~~**6.3.6.3.**Meet the applicable and current approved MOST curriculum standards for three-wheeled Motorcycle training; and~~ ~~**6.3.6.4.**Be approved by the MOST Program Instructor.~~

6.3.7. A CO MOST PROGRAM INSTRUCTOR WILL NOTIFY THE CO MOST PROGRAM VENDOR OF ANY TWO OR THREE-WHEELED STUDENT-PROVIDED MOTORCYCLE THAT IS DETERMINED TO BE UNSAFE FOR USE BY A STUDENT ATTENDING A CO MOST PROGRAM COURSE. ~~A MOST Program Instructor will immediately notify a MOST Program Vendor of any Motorcycle not meeting the requirements of these rules, or that is otherwise determined unsafe for use, and reject the Motorcycle for use in the MOST Program.~~

6.4. CO MOST PROGRAM VENDOR RANGE AND CLASSROOM REQUIREMENTS. Throughout the duration of a contract OR AN AGREEMENT between a CO MOST Program Vendor and the CO MOST Program, ~~the~~ A CO MOST Program VENDOR will:

6.4.1. Obtain and maintain legal access to a Training Site classroom and Range ~~meeting~~ CONSISTENT WITH ALL the requirements of these rules.

6.4.2. Provide a PHYSICAL OR VIRTUAL classroom for training purposes, having adequate facilities for the total number of students attending a CO MOST PROGRAM APPROVED Course, including ~~those~~ REASONABLE AND LEGALLY SUFFICIENT accommodations ~~adequate and~~ necessary to instruct students having disabilities.

6.4.3. PROVIDE ~~affirm that the~~ A TRAINING R~~r~~range to be used by ~~the~~ AN CO MOST Program Vendor for CO MOST PROGRAM APPROVED Course Instruction THAT meets minimum ~~Program~~ CO MOST APPROVED PROGRAM AND PROGRAM APPROVED COURSE requirements. A CO MOST VENDOR MUST SUPPLY DOCUMENTATION EVIDENCING SATISFACTION OF THESE REQUIREMENTS, INCLUDING ~~by providing a r~~Range diagram(s), ~~r~~Range photographs, ~~and~~ proof of legal access to the ~~r~~Range, AND COURSE PROVIDERS APPROVAL OF THE RANGE.

6.4.4. Agree that, with the exception of paving or other improvements, any changes to the dimensions or positioning of the ~~A r~~Range or the ~~r~~Range layout will be diagrammed and RECEIVE APPROVAL FROM THE DEVELOPER OF THE APPLICABLE MOTORCYCLE CURRICULA AND RECEIVE WRITTEN ACKNOWLEDGEMENT FROM ~~approved in writing by~~ the CO MOST Program Office prior to any use.

6.4.5. Maintain a CO MOST PROGRAM APPROVED Course ~~r~~Range such that:

6.4.5.1. ~~All r~~Range markings are correct and visible during training;

6.4.5.2. The ~~r~~Range is ~~paved and~~ free of potholes and other hazards; and

6.4.5.3. Ensure that the ~~r~~Range is secured from the unsafe conditions and intrusions of any kind that could result in the distraction of a student, with the

exceptions of authorized personnel, including CSP personnel and law enforcement.

6.4.6. Complete inspection of the ~~r~~Range prior to each training session to confirm that the ~~course~~ RANGE is free from debris and other hazards that may ADVERSELY affect student safety; and

6.4.7. Provide CO MOST Instructors with the authority to POSTPONE or cancel a scheduled class if ~~the~~ AN Instructor determines that, due to inclement weather, excessive heat, humidity, or other factors, continuing with the class as scheduled COULD ~~would~~ jeopardize the health, safety, and welfare of ~~the~~ students.

6.5. CO MOST VENDOR CHOICE OF COURSE. A CO MOST VENDOR MAY, AT ITS DISCRETION, OPT TO PROVIDE ANY ONE OR ALL OF THE CO MOST PROGRAM APPROVED COURSES THAT A CO MOST VENDOR HAS RECEIVED APPROVAL FROM THE COURSE DEVELOPER TO USE AND APPROVAL TO PROVIDE FROM THE CO MOST PROGRAM.

6.5.1. IN THE EVENT A CO MOST PROGRAM APPROVED COURSE SHOULD NO LONGER BE APPROVED FOR INSTRUCTION IN COLORADO, A VENDOR EMPLOYING INSTRUCTORS CERTIFIED ONLY IN THE FORMERLY APPROVED COURSE MAY REQUEST CO MOST PROGRAM SUPPORT CONSISTENT WITH STATUTE SUPPORTING TRAINING OF INSTRUCTORS FROM THE CO MOST PROGRAM OFFICE.

6.5.1.1. FOR PURPOSES OF THESE RULES, INSTRUCTORS EMPLOYED BY VENDORS REQUESTING PROGRAM SUPPORT FOR RETRAINING IN ANOTHER CO MOST PROGRAM APPROVED COURSE PURSUANT TO THE EXIGENT CIRCUMSTANCES SET FORTH WITHIN 6.5.1. WILL BE TREATED BY THE CO MOST PROGRAM AS IF NEW CO MOST PROGRAM INSTRUCTOR CANDIDATES. THE CO MOST PROGRAM MAY WAIVE INSTRUCTOR SPECIFIC INDIVIDUAL INSTRUCTOR TRAINING REQUIREMENTS ON A CASE-BY-CASE BASIS AS MAY BE DETERMINED TO BE APPROPRIATE.

6.5.2. IN THE EVENT A CO MOST PROGRAM APPROVED VENDOR ELECTS TO SWITCH FROM A CO MOST PROGRAM APPROVED COURSE TO ANOTHER CO MOST PROGRAM APPROVED COURSE ABSENT APPROVAL REVOCATION OF A CO MOST APPROVED PROGRAM AS SET FORTH WITHIN SECTION 6.5.1. OF THESE RULES, THE VENDOR IS RESPONSIBLE FOR THE TRANSITION COSTS ASSOCIATED THEREWITH, INCLUDING RETRAINING COSTS FOR INSTRUCTORS IN THE EMPLOY OF A VENDOR. MOREOVER, A CHANGE IN THE APPROVED CO MOST PROGRAM COURSE OF INSTRUCTION PROVIDED BY A VENDOR ARISING OUT OF THE SALE OF THE BUSINESS OF AN EXISTING, CO MOST PROGRAM CERTIFIED VENDOR IS SUBJECT TO THIS SAME EXCLUSION.

6.5.3. IN THE EVENT A CO MOST PROGRAM VENDOR IS TERMINATED AS A PROVIDER OF A CO MOST PROGRAM APPROVED COURSE AND SUBSEQUENTLY RECEIVES CERTIFICATION TO PROVIDE ANOTHER CO MOST PROGRAM APPROVED COURSE,

THE CO MOST VENDOR IS RESPONSIBLE FOR ALL COSTS OF PROGRAM TRANSITION, INCLUDING THE RETRAINING OF ANY INSTRUCTORS IN THE EMPLOY OF THE VENDOR.

7. ~~CSP~~ CO MOST PROGRAM INSTRUCTORS

7.1. CO MOST PROGRAM INSTRUCTOR ~~CERTIFICATION~~ REQUIREMENTS. A person must first be certified as a CO MOST Program Instructor by the ~~CSP~~ CO MOST PROGRAM prior to instructing any CO MOST PROGRAM APPROVED Courses. ~~Certification~~ INSTRUCTOR applications must be submitted to the CO MOST Program Office between January 1st and ~~January 31st~~ February 28th of each year. ~~Certifications received~~ CO MOST PROGRAM INSTRUCTOR CERTIFICATIONS ISSUED during this time period ~~will be~~ ARE effective for a period of no longer than one (1) year, beginning March 1st of the current APPLICATION year and expiring February 28th of the next year, WITH THE EXCEPTION OF A LEAP YEAR. To obtain CO MOST Program Instructor certification from the ~~CSP~~ CO MOST PROGRAM, a person must complete ALL ~~any~~ applicationS AND paperwork AS ARE required by the ~~CSP~~ CO MOST PROGRAM and:

7.1.1. Meet the age requirements as set forth within §43-5-503(2), CRS;

7.1.2. Submit proof of successful completion of a CO MOST PROGRAM APPROVED Instructor Training Course ~~approved by the CSP~~;

7.1.2.1. BEGINNING UPON THE EFFECTIVE DATE OF THESE RULES, SUBSEQUENT NEW CO MOST PROGRAM INSTRUCTOR APPLICATIONS AND CO MOST INSTRUCTOR APPLICATIONS SUBMITTED AFTER CERTIFICATION SUSPENSION OR REVOCATION FROM THE CO MOST PROGRAM MUST INCLUDE DOCUMENTATION CONFIRMING THE SUCCESSFUL COMPLETION OF A CO MOST PROGRAM APPROVED INSTRUCTOR TRAINING COURSE WITH A PASSING SCORE ON THE CO MOST PROGRAM APPROVED COURSE SKILLS TEST, AS DETAILED WITHIN THE CO MOST PROGRAM PNP. THE DETERMINATION OF REINSTATEMENT OF A CO MOST PROGRAM INSTRUCTOR WILL OCCUR CONSISTENT WITH SECTION 10 OF THESE RULES.

7.1.2.2. UPON THE EFFECTIVE DATE OF THESE RULES, CO MOST PROGRAM INSTRUCTOR APPLICATIONS SUBMITTED TO THE CO MOST PROGRAM OFFICE BY APPLICANTS HAVING SUCCESSFULLY COMPLETED A NATIONAL CO MOST PROGRAM APPROVED COURSE IN COLORADO OR ANOTHER STATE MUST INCLUDE DOCUMENTATION SPECIFICALLY INDICATING THE ADDITIONAL COMPLETION OF A CO MOST PROGRAM APPROVED COURSE SKILLS TEST WITH A SUCCESSFUL SCORE, AS DETAILED WITHIN THE CO MOST PROGRAM PNP. WHERE THE ORIGINAL COURSE INSTRUCTION DOES NOT INCLUDE AN CO MOST PROGRAM APPROVED COURSE SKILLS TEST AS PART OF THE COURSE, THE APPLICANT CANDIDATE WILL BE REQUIRED TO ADDITIONALLY COMPLETE A CO MOST PROGRAM APPROVED COURSE SKILLS TEST WITH A SUCCESSFUL

SCORE, AS IT IS DETAILED WITHIN THE CO MOST PNP TO BE ELIGIBLE TO APPLY FOR STATUS AS AN CERTIFIED CO MOST PROGRAM INSTRUCTOR.

7.1.2.3. BEGINNING UPON THE EFFECTIVE DATE OF THESE RULES, SUBSEQUENT NEW CO MOST PROGRAM INSTRUCTOR APPLICATIONS OR APPLICATIONS FOR ANNUAL RENEWAL OF INSTRUCTOR CERTIFICATION SUBMITTED TO THE CO MOST PROGRAM MUST INCLUDE DOCUMENTATION CONFIRMING THE SUCCESSFUL COMPLETION OF A CO MOST APPROVED INSTRUCTOR TRAINING COURSE CONSISTENT WITH STANDARDS SET FORTH WITHIN THE CO MOST PNP.

7.1.2.4. UPON THE EFFECTIVE DATE OF THESE RULES, SUBSEQUENT APPLICATIONS FOR CO MOST PROGRAM INSTRUCTORS SUBMITTED TO THE CO MOST PROGRAM BY AN APPLICANT CANDIDATE SUCCESSFULLY COMPLETING A CO MOST PROGRAM APPROVED TRAINING COURSE IN COLORADO OR ANOTHER STATE MUST INCLUDE DOCUMENTATION SPECIFICALLY INDICATING THE ADDITIONAL COMPLETION OF A CO MOST PROGRAM APPROVED KNOWLEDGE TEST WITH A SUCCESSFUL SCORE AS IT IS DEFINED WITHIN THE CO MOST PROGRAM PNP.

7.1.3. PROVIDE PROOF THAT THE APPLICANT CANDIDATE ~~P~~possesses a valid STATE driver'S license WITH A MOTORCYCLE ENDORSEMENT issued by the state of RESIDENCY ~~Colorado having a Motorcycle endorsement~~. Where applicant CANDIDATE possessed OR POSSESSES a license issued by another state in the three (3) year period prior to the submission of the application, THE A~~a~~pplicant CANDIDATE must also indicate the state of issue for the prior license and the license number.

7.1.4. COLORADO RESIDENTS MUST ~~S~~submit a completed CDOR Form DR2559, "Permission for Release of Individual Records," to the CO MOST Program Office that evidences an acceptable driving record as required by §43-5-503, CRS, or a MOTOR VEHICLE RECORD (MVR), AS SUCH DOCUMENT IS IDENTIFIED WITHIN THESE RULES, for a three (3) year period prior to the application submission date OR ANY PORTION THEREOF. AN APPLICATION SUBMITTED WITHOUT ~~A~~a driving record OR MVR DATED WITHIN 30 DAYS OF THE APPLICATION SUBMISSION DATE will BE not found acceptable, DETERMINED INCOMPLETE, AND MAY BE RETURNED FOR COMPLETION AT THE DISCRETION OF THE CO MOST PROGRAM COORDINATOR. ~~And a~~ An ~~a~~Applicant CANDIDATE will be determined ineligible:~~.~~

7.1.4.1. If, within the three (3) years prior to the date of the CO MOST INSTRUCTOR APPLICATION submission, the license issued to the ~~a~~Applicant CANDIDATE by the state of Colorado has been revoked or suspended;

7.1.4.2. If, within three (3) years prior to the date of THE CO MOST INSTRUCTOR APPLICATION submission, an ~~a~~Applicant CANDIDATE has been convicted

for an offense assigned eight (8) or more points in the schedule set forth within §42-2-127 (5), CRS~~, or is equivalent in any other state~~; or

7.1.4.3. If, within the three (3) years prior to the date of the CO MOST INSTRUCTOR application submission, a driver's license issued to the ~~a~~Applicant CANDIDATE from any other state has been revoked or suspended.

7.1.5. NON-COLORADO RESIDENTS ARE REQUIRED TO ACQUIRE AND INCLUDE WITH THE CO MOST INSTRUCTOR APPLICATION THEIR DRIVER'S LICENSE RECORD OR MVR FROM THEIR CURRENT OR MOST RECENT STATE OF RESIDENCY, DATED WITHIN 30 DAYS OF THE APPLICATION SUBMISSION. AN APPLICATION WILL BE DETERMINED INCOMPLETE IN THE ABSENCE OF A DRIVER'S LICENSE RECORD OR MVR, AND WILL BE RETURNED FOR COMPLETION BY THE CO MOST PROGRAM MANAGER TO THE APPLICANT CANDIDATE. MOREOVER, A NON-COLORADO RESIDENT APPLICANT CANDIDATE WILL BE DETERMINED INELIGIBLE:

7.1.5.1. IF, WITHIN THE THREE (3) YEARS PRIOR TO THE DATE OF THE APPLICATION SUBMISSION, A LICENSE ISSUED TO THE APPLICANT CANDIDATE BY ANOTHER STATE HAS BEEN REVOKED OR SUSPENDED; OR

7.1.5.2. IF, WITHIN THE THREE (3) YEARS PRIOR TO THE DATE OF THE APPLICATION SUBMISSION, AN APPLICANT CANDIDATE HAS BEEN CONVICTED FOR AN OFFENSE ASSIGNED EIGHT (8) OR MORE POINTS OR CONVICTED IN ANOTHER STATE FOR AN OFFENSE EQUIVALENT TO THOSE OFFENSES ASSIGNED EIGHT (8) OR MORE POINTS ON THE SCHEDULE SET FORTH WITHIN §42-2-127 (5), CRS, OR ITS EQUIVALENT SCHEDULE IN THE LICENSING STATE.

7.1.6. NON-COLORADO RESIDENTS WHO ARE ACTIVE DUTY MEMBERS OF THE MILITARY HOLDING A DRIVER'S LICENSE FROM A STATE OTHER THAN COLORADO ARE EXEMPT FROM THE REQUIREMENTS OF 7.1.5. ALTERNATIVELY, MEMBERS OF THE MILITARY WHO ARE NOT RESIDENTS OF COLORADO ARE REQUIRED TO PROVIDE DOCUMENTATION AS MAY BE DETERMINED TO BE REASONABLY NECESSARY BY THE CO MOST PROGRAM COORDINATOR TO CONFIRM VALIDITY OF A DRIVER'S LICENSE AND MINIMALLY CONSISTENT WITH CO MOST PROGRAM INSTRUCTOR REQUIREMENTS SET FORTH WITHIN THESE RULES AND THE CO MOST PROGRAM PNP.

7.2. CO MOST PROGRAM INSTRUCTOR ~~CERTIFICATION~~ MAINTENANCE. To ~~remain certified,~~ CONTINUE AS AN ~~a~~ CO MOST Program Instructor, AN Instructor must:

7.2.1. ~~Provide evidence of certification upon request.~~ MAINTAIN COMPLIANCE WITH CO MOST PROGRAM INSTRUCTOR REQUIREMENTS, TERMS, AND CONDITIONS OF APPLICABLE CO MOST PROGRAM APPROVED MOST COURSES, APPLICABLE

LAWS, AND THESE RULES. ~~Attend all required MOST Program Courses, meetings, and PDWs.~~

7.2.1.1. ~~**7.2.2.1.**~~ FAILURE TO MAINTAIN COMPLIANCE AND ANY RESULTING INELIGIBILITY, SUSPENSION, REVOCATION OR TERMINATION OF AN INSTRUCTOR FROM ANY CO MOST APPROVED PROGRAM COURSE WILL IMMEDIATELY RESULT IN THE SUSPENSION AND/OR THE PENDING REVOCATION OF A CO MOST PROGRAM INSTRUCTOR CERTIFICATION.

7.2.2. Attend AND COMPLETE all required CO MOST Program Courses, meetings, and PDWs OR RECEIVE WAIVER THEREFROM PURSUANT TO THE TERMS AND CONDITIONS OF THE CO MOST VENDOR AGREEMENT AND CONSISTENT WITH THE CO MOST PNP.

~~**7.2.2.1.** If a MOST Program Instructor is unable to attend a required MOST Program Course meeting or PDW, the Instructor must seek approval in advance to be absent from the event.~~

7.2.2.1. ~~**7.2.2.2.**~~ Failure to attend OR COMPLETE a required CO MOST Program Course, meeting, or PDWS, without prior approval to be absent therefrom, may result in THE limitation, suspension, or revocation of A CO MOST Program Instructor Certification ~~by the CSP~~.

7.2.3. Teach a minimum of THREE ~~two (2)~~ (3) CO MOST PROGRAM APPROVED Courses, OR THE EQUIVALENT THEREOF DURING A CO MOST PROGRAM INSTRUCTOR ANNUAL CERTIFICATION PERIOD AS IS IDENTIFIED TO OCCUR BY THESE RULES. ~~annually during the certification period as set forth within these rules.~~

7.2.4. Exhibit professional conduct and expertise when instructing students or when counseling out a student, including:

7.2.4.1. CO MOST Program Instructors must be physically capable of conducting CO MOST PROGRAM APPROVED Courses and maintain positive, safe learning environmentS.

7.2.4.2. CO MOST Program Instructors must not be impaired by alcohol or drugs when instructing a CO MOST PROGRAM APPROVED Course, including prescription or over-the-counter medications that may impair performance and response ability.

7.2.4.3. CO MOST Program Instructors must not ENGAGE IN ~~use~~ any unapproved USE OF electronic devices during ~~the~~ A CO MOST PROGRAM APPROVED ~~c~~Course. ~~of instruction, including cell phones.~~

7.2.4.4. CO MOST Program Instructors must refrain from the use of tobacco products, including chewing tobacco OR VAPING PRODUCTS, during ~~the~~ CO MOST PROGRAM APPROVED ~~c~~CourseS ~~of instruction~~; and

7.2.4.5. CO MOST Program Instructors must demonstrate ~~tact~~ PROFESSIONAL DISCRETION AND COURTESY when counseling out a student where it has been determined that the student should cease participation in a CO MOST PROGRAM APPROVED Course in order to protect the safety of the student and/or the safety of others.

7.2.5. Follow CO MOST Program procedures for reporting incidents and injuries occurring during CO ~~most~~ MOST PROGRAM APPROVED ~~c~~Course instruction by:

7.2.5.1. Filing a COPY OF THE ~~separate~~ incident report ~~as~~ provided by the CO MOST Program APPROVED COURSE PROVIDER WITH THE CO MOST PROGRAM Office CONSISTENT WITH THE CO MOST PNP, detailing any property damage or personal injury to a student. This report must be filed with the CO MOST Program Office within the time frame indicated in the CO MOST Vendor ~~Contract~~ AGREEMENT AND THE CO MOST PROGRAM PNP, and should include:

7.2.5.1.1. The complete Training Site PHYSICAL address AND MAILING ADDRESS, IF DIFFERENT;

7.2.5.1.2. An accurate depiction of the ~~r~~Range layout at the time of the incident;

7.2.5.1.3. Photographs, if available;

7.2.5.1.4. All information on the student(s) involved in the incident, including any contact information, names and addresses of any witnesses, EMAIL ADDRESSES, and any incident-related Motorcycle damage. ~~;and~~

~~**7.2.5.1.5.** A current email address of the student(s) Vendor representative(s) and Instructor(s) involved.~~

7.2.5.2. Any updates to the incident report or updates to personal addresses or other contact information must be reported to the CO MOST Program Office within 15 days of any such changes.

7.2.6. Notify the CO MOST Program Office and the CO MOST Vendor(s) for whom AN ~~the~~ CO MOST Instructor provides training of any event that affects the CO MOST Instructor's ability to meet the requirements of these rules, best practices, CO MOST PROGRAM policies and procedures, APPLICABLE CO MOST PROGRAM APPROVED COURSES, THE CO MOST PNP, AND/OR compliance with applicable state statutes.

7.3. CO MOST INSTRUCTOR CHOICE OF COURSE. A CO MOST INSTRUCTOR MAY, AT THEIR DISCRETION, OPT TO PURSUE AND RECEIVE TRAINING IN ANY ONE OR ALL CO MOST PROGRAM APPROVED COURSES.

7.3.1. EXISTING CERTIFIED CO MOST PROGRAM INSTRUCTORS IN GOOD STANDING WITH THE CO MOST PROGRAM MAY REQUEST CO MOST PROGRAM SUPPORT AS A STUDENT NEW TO ANY CO MOST PROGRAM APPROVED COURSE FOR WHICH THE CO MOST PROGRAM INSTRUCTOR HAS NOT ALREADY RECEIVED TRAINING OR BEEN CERTIFIED TO INSTRUCT BY THE CO MOST PROGRAM.

7.3.2. THE AWARD OF ANY CO MOST PROGRAM SUPPORT WILL BE CONTINGENT UPON CO MOST PROGRAM FUNDING AVAILABILITY AND, IF AVAILABLE, AWARDED IN THE ORDER REQUESTS FOR ADDITIONAL CO MOST APPROVED COURSE TRAINING ARE RECEIVED.

7.4. ~~**7.3.**~~ **CO MOST PROGRAM INSTRUCTOR RECERTIFICATION AND CERTIFICATION RENEWAL.**

7.4.1. ~~**7.3.1.**~~ A CO MOST Program instructor failing to maintain AN ~~certification~~ CO MOST PROGRAM INSTRUCTOR CERTIFICATION as required by these rules, applicable lawS, APPLICABLE CO MOST PROGRAM APPROVED COURSES, AND THE CO MOST PNP ~~and the MOST Program~~ must:

7.4.1.1. ~~**7.3.1.1.**~~ Successfully complete a CO MOST Program APPROVED Instructor Training Course, AS SET FORTH BY SECTION 7 OF THESE RULES; and

7.4.1.2. ~~**7.3.1.2.**~~ Apply for recertification by submitting an CO MOST Instructor ~~Certification~~ application to the CO MOST Program Office, CONSISTENT WITH APPLICABLE PROVISIONS SET FORTH WITHIN SECTION 7 OF THESE RULES, APPLICABLE CO MOST PROGRAM APPROVED COURSES, AND THE CO MOST PROGRAM PNP.

7.4.2. CO MOST PROGRAM INSTRUCTORS APPLYING TO RENEW CO MOST PROGRAM INSTRUCTOR CERTIFICATION ANNUALLY SHOULD DO SO AS DIRECTED BY THE CO MOST PROGRAM PNP AND THESE RULES UNLESS OTHERWISE DETERMINED INELIGIBLE TO DO SO. IN THE EVENT OF INELIGIBILITY, A CO MOST PROGRAM INSTRUCTOR MAY PURSUE RECERTIFICATION AS SET FORTH WITHIN THESE RULES.

7.4.2.1. ~~**7.3.2.**~~ A CO MOST Program Instructor seeking to renew a certification required by these rules, applicable law, and the CO MOST Program must~~: 7.3.2.1. A~~apply for RENEWAL ~~recertification~~ OF AN INSTRUCTOR CERTIFICATION by submitting a COMPLETE Instructor ~~Certification~~ Application to the CO MOST Program Office.

8. CO MOST PROGRAM APPROVED ~~COURSE~~ TRAINING

8.1. CO MOST INSTRUCTOR TRAINING COURSE. To DELIVER OR PROVIDE CO MOST PROGRAM APPROVED TRAINING COURSES, ~~be eligible to use MOST Program funds for a MOST Instructor Training Course,~~ a CO MOST Vendor must first: ~~obtain approval from the MOST Program Office and provide the following information to the MOST Program Office;~~

8.1.1. OBTAIN CERTIFICATION FROM THE CO MOST PROGRAM OFFICE; ~~A statement confirming that the CO MOST Instructor Training Course will be provided by a Certified MOST Instructor Trainer or equivalent in another state; and~~

8.1.2. AGREE THAT ALL CO MOST PROGRAM APPROVED COURSES SUPPORTED THROUGH THE CO MOST PROGRAM OFFICE (COURSE MATERIALS, BOOKS, ETC.) ARE OFFERED TO ALL CO MOST INSTRUCTORS. CO MOST PROGRAM APPROVED COURSES ALSO SUPPORTED THROUGH THE CO MOST PROGRAM MUST BE OPEN TO ALL COLORADO RESIDENTS WHO ARE QUALIFIED CO MOST RIDERCOACH/INSTRUCTOR CANDIDATES, REGARDLESS OF WHERE OR THROUGH THE CO MOST PROGRAM APPROVED INSTRUCTOR TRAINING IS PROVIDED. AGREEMENT MAY BE RECORDED THROUGH ELECTRONIC MEANS. ~~A copy of the approved MOST Instructor Training Course to the MOST Program Office.~~

8.1.2.1. REGARDLESS OF WHETHER A MOST INSTRUCTOR TRAINING COURSE IS SUPPORTED THROUGH THE CO MOST PROGRAM, ALL APPLICABLE CO MOST PROGRAM VENDOR, STUDENT, AND COURSE REPORTING REQUIREMENTS MUST BE SATISFIED.

8.1.3. P~~p~~rovide the following information to the CO MOST Program Office: ~~To be approved as a Certified MOST Instructor Training Course, the materials provided must demonstrate that:~~

8.1.3.1. IN-STATE VS OUT-OF-STATE INSTRUCTOR TRAINERS. A statement confirming that the CO MOST PROGRAM APPROVED Instructor Training Course will be provided by a ~~Certified~~ CO MOST PROGRAM CERTIFIED Instructor Trainer or AN OUT-OF-STATE APPROVED COURSE INSTRUCTOR TRAINER EQUIVALENT. ~~In another state; and~~ IN THE EVENT AN OUT-OF-STATE APPROVED COURSE TRAINER IS SCHEDULED TO DELIVER A CO MOST PROGRAM APPROVED TRAINING COURSE, THE OUT-OF-STATE INSTRUCTOR TRAINER MUST CONSENT TO ABIDE BY ALL APPLICABLE CO MOST PROGRAM INSTRUCTOR STANDARDS. CONSENT MAY BE RECORDED THROUGH ELECTRONIC MEANS. ~~The MOST Course content is research based and provides adequate instruction to teach all components of a specific MOST Program approved Motorcycle training curriculum;~~

8.1.3.2. A STATEMENT FROM THE CO MOST PROGRAM CERTIFIED VENDOR ACKNOWLEDGING RESPONSIBILITY TO FIRST SEEK AND USE CERTIFIED CO MOST PROGRAM INSTRUCTORS OR INSTRUCTOR TRAINERS AVAILABLE WITHIN COLORADO BEFORE SEEKING OUT AND USING MOST

PROGRAM INSTRUCTORS OR INSTRUCTOR TRAINERS FROM OUTSIDE OF COLORADO. ~~Any Course content specific to BRC is research-based and provides adequate instruction to teach all components of the BRC;~~

~~**8.1.3.3.** Course content imparts to the student instructors in attendance the BRC material, knowledge of safe Motorcycle operating practices, and the necessary aptitude for instructing students; and~~

~~**8.1.3.4.** The instructor training includes information or the effects of alcohol and drugs on the operation of motorcycles.~~

~~**8.1.4.** The MOST Program Office will maintain a copy of the complete text of Course materials for every approved MOST Instructor Training Course. Any person may obtain information or copies of approved MOST Instructor Training Course materials by submitting an Open Records Request through the CSP Central Records Unit (CRU).~~

8.2. CO MOST COURSE GUIDELINES ~~BRC CERTIFICATION~~. ~~A BRC must be certified by the MOST Program Office before it may be offered.~~ ALL CDOR-RECOGNIZED MOTORCYCLE LICENSE-WAIVING TRAINING COURSES MUST RECEIVE CO MOST PROGRAM CERTIFICATION BEFORE THEY MAY BE OFFERED TO STUDENTS IN COLORADO. To be eligible for ~~certification~~ APPROVAL IN COLORADO, COURSES SUBMITTED TO THE CO MOST PROGRAM ~~a BRC~~ must:

8.2.1. Be submitted as part of a written request for review by the CO MOST Program Office and the CDOR.

8.2.1.1. SUBMITTED MATERIALS RECEIVED BY THE CO MOST PROGRAM OFFICE WILL BE SUBJECT TO A THIRD-PARTY REVIEW FOR PURPOSES OF COPYRIGHT INFRINGEMENT DETERMINATION PRIOR TO BEING SHARED WITH THE CDOR. THE CO MOST PROGRAM WILL ARRANGE COPYRIGHT REVIEW SERVICES FOR COURSE APPLICATIONS RECEIVED.

8.2.1.2. COURSE APPLICATION SUBMISSIONS DETERMINED TO VIOLATE COPYRIGHTS OF EXISTING NATIONAL OR STATE-DEVELOPED CURRICULA WILL BE REJECTED WITH AN EXPLANATION IN WRITING DETAILING THE INFRINGEMENT DETERMINED. SUBMISSIONS DETERMINED TO CONTAIN MATERIAL IN VIOLATION OF COPYRIGHTS ATTACHED TO EXISTING MOST OR CO MOST PROGRAM APPROVED COURSES WILL REMAIN ON FILE WITH THE CO MOST PROGRAM, BUT WILL NOT BE FORWARDED TO THE CDOR.

8.2.2. ~~**8.1.2. CO MOST COURSE REQUIREMENTS.** Meet the CDOR's requirements for issuing a Colorado driver's license endorsement.~~ A COMPLETE copy of the PROPOSED Training Course MUST BE PROVIDED to the CO MOST Program Office~~.~~ ~~**8.1.3.**~~ FOR EVALUATION AND ASSESSMENT. TO BE approved as a CO MOST PROGRAM Course, the materials provided AS PART OF THE APPLICATION must demonstrate that THE COURSE MEETS the CDOR's requirements to issue a

COLORADO Driver's License Motorcycle endorsement AND MEETS THE FOLLOWING REQUIREMENTS:

8.2.2.1. ~~**8.1.3.1.**~~ The PROPOSED MOST Course content is research-based and provides ~~adequate~~ APPROPRIATE instruction CONTENT to teach all components of a specific CO MOST Program approved Motorcycle Training ~~Curriculum~~ COURSE;

8.2.2.2. ~~**8.1.3.2.**~~ THE COURSE PROVIDES ADEQUATE INSTRUCTION AND METHODOLOGIES TO TEACH ALL COMPONENTS ~~Any Course content specific to BRC is research-based and provides adequate instruction to teach all components of the BRC~~;

8.2.2.3. ~~**8.1.3.3.**~~ THE Course content imparts ~~to the student instructors in attendance~~ knowledge of safe Motorcycle operating practices, and the necessary aptitude for instructing CO MOST students, CONSISTENT WITH §43-5-502, CRS; and

8.2.2.4. ~~**8.1.3.4.**~~ The ~~instructor training includes information on~~ COURSE ADDRESSES the effects of alcohol, drugs, AND OTHER OPERATOR IMPAIRMENTS on the operation of ~~m~~Motorcycles, AS IS ALSO CONSISTENT WITH §43-5-502, CRS.

~~**8.2.4. 8.1.4.**~~

8.2.2.5. ~~**8.2.5.**~~ THE COURSE IS ~~Be~~ organized and comprised of APPLICABLE content based upon documented research and demonstrated effective in providing safety training. ANY BASIC OR NOVICE MOTORCYCLE RIDER COURSE MUST BE consistent with the Model National Standards for Entry-Level Motorcycle Rider Training in effect as of ~~August 2011~~ JANUARY 2021, hereby incorporated into the rules by reference, excluding any later amendments.

8.2.2.5.1. ~~**8.2.5.1.**~~The Model National Standards for Entry-Level Motorcycle Training ARE ~~will be~~ available for copying or public inspection during regular business hours ~~from~~ AT the CO MOST Program Office.

8.2.2.6. ~~**8.2.6.**~~ IncludeS an evaluation of the student's knowledge and skill as ~~it~~ EACH relates to the SAFE operation of a Motorcycle. Successful completion ~~of a BRC~~ by a student requires a passing SCORE of both a written CO MOST PROGRAM APPROVED COURSE Knowledge test and a~~n~~ ~~on cycle~~ MOTORCYCLE SKILLS TEST evaluation.

8.2.2.7. ~~**8.2.7.**~~ RequireS that all CO MOST PROGRAM APPROVED ~~c~~Course participants and ~~MOST Program~~ Instructors wear protective gear WHENEVER SEATED ON A MOTORCYCLE DURING INSTRUCTION OF A COURSE, including:

8.2.2.7.1. ~~**8.2.7.1.**~~ A USDOT-Compliant Motorcycle helmet;

8.2.2.7.2. ~~**8.2.7.2.**~~ Eye protection;

8.2.2.7.3. ~~**8.2.7.3.**~~ A Long-Sleeved shirt or jacket;

8.2.2.7.4. ~~**8.2.7.4.**~~ FULL-FINGERED gloves;

8.2.2.7.5. ~~**8.2.7.5.**~~ Long-legged pants OF DURABLE MATERIAL PROVIDING AN APPROPRIATE LEVEL OF COVERAGE AND PROTECTION; and

8.2.2.7.6. ~~**8.2.7.6.** Sturdy b~~ Boots or shoes OF STURDY CONSTRUCTION AND DESIGN that coverS THE ANKLE WHEN sitting upon a Motorcycle.

8.2.2.8. INCLUDE EVIDENCE AND INFORMATION RELATING TO THE TRAINING, EVALUATION, AND ASSESSMENT PROTOCOL NECESSARY TO ENSURE THE INTEGRITY OF THE INSTRUCTION PROVIDED, INSTRUCTION OF INSTRUCTORS, AND THE OVERALL EXISTENCE AND SUFFICIENCY OF REQUIRED CO MOST PROGRAM APPROVED COURSE ELEMENTS ADDRESSED BY THESE RULES, THE CO MOST PNP, THE CO MOST VENDOR AGREEMENT, CO MOST PROGRAM INSTRUCTOR REQUIREMENTS, APPLICABLE CO MOST PROGRAM APPROVED COURSES, AND APPLICABLE STATE LAWS. EVIDENCE AND INFORMATION PROVIDED MUST SPECIFICALLY ADDRESS COMPLIANCE OF THE COURSE AND ITS INSTRUCTORS WITH ALL RELATED CO MOST PROGRAM COURSE TRAINING REQUIREMENTS AND THE CO MOST PROGRAM QUALITY ASSURANCE REQUIREMENTS. ADDITIONAL GUIDANCE REGARDING RECOMMENDED ELEMENTS AND REQUIREMENTS TO BE INCLUDED AS PART OF A CO MOST COURSE SUBMISSION TO THE CO MOST PROGRAM OFFICE MAY BE REVIEWED IN THE CO MOST PROGRAM PNP. MINIMALLY, EACH CO MOST COURSE APPLICATION MUST:

8.2.2.8.1. IDENTIFY HOW THE COURSE PROPOSED MEETS CO MOST PROGRAM APPROVAL REQUIREMENTS, NATIONALLY RECOGNIZED BEST PRACTICES AND STANDARDS, AND DEFINE HOW ANY TWO-WHEEL LEVEL I VS. LEVEL II AND/OR THREE-WHEEL LEVEL I VS. LEVEL II ARE CONSISTENT THEREWITH.

8.2.2.8.2. DESCRIBE AND IDENTIFY THE METHODOLOGY THAT WILL BE APPLIED WHEN INCORPORATING CHANGES AND UPDATES TO COURSES, VERIFYING THAT CHANGES AND UPDATES WILL NOT OPERATE IN OPPOSITION TO CURRENT VERSIONS OF CO MOST PROGRAM APPROVED COURSES.

8.2.2.8.3. DESCRIBE AND IDENTIFY MEASURES OF ACCOUNTABILITY AND ASSESSMENT THAT APPLY TO THE MEASUREMENT,

EVALUATION, AND REPORTING OF THE EFFECTIVENESS OF CURRENT OPERATION AND OF PROGRAM AMENDMENTS AND UPDATES. THESE MEASURES OF ACCOUNTABILITY AND ASSESSMENT MUST SPECIFICALLY IDENTIFY CONSISTENCY AND INCONSISTENCY WITH APPLICABLE CO MOST PROGRAM APPROVED COURSE REQUIREMENTS, THESE RULES, AND OTHER APPLICABLE CO MOST PROGRAM REQUIREMENTS.

8.2.2.8.4. CONFIRM THAT ALL APPROPRIATE AND ADEQUATE RESOURCES NECESSARY TO DELIVER TRAINING AND/OR MATERIALS ARE AVAILABLE AND/OR WILL BE ACQUIRED AND MADE AVAILABLE TO ALL CO MOST PROGRAM APPROVED TRAINING SITES AND INSTRUCTORS.

8.2.2.8.5. DESCRIBE AND IDENTIFY THE INSTRUCTION METHOD(S) PROPOSED AND HOW THE METHOD(S) SUPPORT EFFECTIVE RESEARCH-BASED TRAINING STANDARDS AND PEDAGOGY FOR THE SAFE OPERATION OF TWO OR THREE-WHEEL MOTORCYCLES.

8.2.2.8.6. INCLUDE WRITTEN DOCUMENTATION CONFIRMING THE LEGAL AUTHORITY OR OWNERSHIP FROM THE COURSE OWNER OR PROVIDER, GRANTING LEGAL LICENSE OR OTHER AUTHORIZATION TO THE COURSE APPLICANT TO USE THE NAME, PRODUCTS, LIKENESS, LOGOS, IMAGES, VIDEOS, ETC., OF THE COURSE OWNER OR PROVIDER. APPLICANT MUST ALSO COMPLETE A WRITTEN STATEMENT THAT SUCH AUTHORIZATION OR LICENSE BETWEEN THE APPLICANT AND THE COURSE OWNER OR PROVIDER WILL BE MAINTAINED IN GOOD STANDING FOR THE TERM OF ANY CONTRACT OR AGREEMENT APPLICABLE THERETO. THE AGREEMENT OR CONTRACT BETWEEN THE COURSE PROVIDER AND THE APPLICANT MUST EXTEND TO COVER ANY COURSE AMENDMENTS, CHANGES, AND UPDATES OF A COURSE SUBMITTED TO THE CO MOST PROGRAM FOR THE DURATION THE COURSE IS APPROVED FOR USE IN COLORADO THROUGH THE CO MOST PROGRAM. THE CO MOST PROGRAM RESERVES THE RIGHT TO REQUIRE UPDATED INFORMATION REGARDING AUTHORITY OR LICENSE FROM A COURSE OWNER OR PROVIDER FOR AN CO MOST PROGRAM APPROVED COURSE.

8.2.2.9. APPLICANTS MUST AGREE THAT, IN THE EVENT OF ANY LEGAL CHALLENGE TO THE LEGAL USE OF COURSE CONTENT, WRITTEN NOTICE WILL BE FORWARDED TO THE CO MOST PROGRAM OFFICE WITHIN FIVE (5) BUSINESS DAYS. FURTHERMORE, IN THE EVENT OF A LEGAL DECISION VOIDING THE PRIOR LEGAL USE OF THE CO MOST PROGRAM

APPROVED COURSE OR ITS MATERIALS, WRITTEN NOTICE WILL BE FORWARDED TO THE CO MOST PROGRAM OFFICE WITHIN 48 HOURS.

8.2.2.10. THE CO MOST PROGRAM RESERVES THE RIGHT TO REASONABLY LIMIT THE NUMBER OF STUDENTS PARTICIPATING IN ANY CO MOST PROGRAM APPROVED COURSE, AND THE RIGHT TO APPROVE, DISAPPROVE, OR RESTRICT PROPOSED METHODS OF INSTRUCTION, CONSISTENT WITH NATIONALLY RECOGNIZED COACH-TO-STUDENT RATIOS.

8.2.3. ~~**8.2.8.**~~ Require and COMPLY ~~commit~~ WITH THE ~~that the~~ Instructor-to-Student Ratio STANDARDS AND BEST PRACTICES SET FORTH ~~for BRC will confirm to the standards set forth~~ in the APPLICABLE ~~approved~~ CO MOST PROGRAM APPROVED ~~curriculum~~ COURSES. ~~Instill in the student the knowledge, attitudes, habits, and skills necessary for the operation of a Motorcycle as required by §43-5-503, CRS.~~

8.2.4. ~~**8.2.9.**~~ The CO MOST Program Office will maintain a copy of the complete ~~text of the certified~~ Course materials for every CO MOST PROGRAM approved ~~BRC~~ COURSE. Any person may ~~obtain~~ REQUEST information ABOUT AN ~~or copies of certified BRC~~ APPROVED CO MOST COURSE OR ITS materials by ~~contacting the MOST Program Office during normal business hours~~ SUBMITTING A REQUEST THROUGH THE CSP CENTRAL RECORDS UNIT (CRU). ~~Include instruction relating to the effects of alcohol and/or drugs on the operation of Motorcycles, as required by §43-5-502, CRS.~~

8.2.5. ~~**8.2.10.**~~ A list of all current ~~CSP approved BRCs~~ CO MOST PROGRAM APPROVED COURSES will be maintained by the CO MOST Program Office. ~~Be organized and comprised of content based upon documented research and demonstrated as effective in providing safety training consistent with the Model National Standards for Entry Level Motorcycle Rider Training in effect as of August 2011, hereby incorporated into the rules by reference, excluding any later amendments.~~

~~**8.2.5.1.** The Model National Standards for Entry Level Motorcycle Training will be available for copying or public inspection during regular business hours from the MOST Program Office.~~

8.2.6. ~~**8.2.11.**~~ Approval ~~and /Certification~~ of a ~~BRC~~ MOST COURSE SUBMITTED FOR CO MOST PROGRAM APPROVAL ~~by the MOST Program~~ may take up to one (1) calendar year following the submission of a complete COURSE application. ~~Include an evaluation of the student's knowledge and skill as it relates to the operation of a Motorcycle. Successful completing of a BRC by a student requires the passing of both a written knowledge test and an on-cycle evaluation.~~

8.2.7. ~~**8.2.11.1.**~~ THE CO MOST PROGRAM WILL ENGAGE AN INDEPENDENT THIRD-PARTY CURRICULA/COURSE REVIEW BODY TO FACILITATE AND COMPLETE THE INITIAL COURSE DOCUMENT REVIEW. AN INITIAL DOCUMENT REVIEW WILL BE

COMPLETED NO SOONER THAN 90 DAYS FOLLOWING THE COMPLETION OF A CO MOST PROGRAM COPYRIGHT REVIEW OF A COURSE SUBMISSION. ~~Certification of a BRC requires completion of an on-site review of the proposed course in its entirety by the MOST Program or its agent(s). It is the responsibility of the person submitting the BRC for Certification to cooperate in good faith with the MOST Program or its agent(s) to complete this requirement. Delay of this requirement may delay the certification of a BRC beyond the aforementioned single calendar year. including: 8.2.7.1. A USDOT compliant Motorcycle helmet; 8.2.7.2. Eye protection; 8.2.7.3. A king-sleeved shirt or jacket; 8.2.7.4. Gloves; 8.2.7.5. A Long-sleeved shirt or jacket; and 8.2.7.6. Sturdy boots or shoes that cover the ankle when sitting upon a Motorcycle.~~

8.2.8. ONCE THE INITIAL DOCUMENT REVIEW OF A COURSE APPLICATION SUBMISSION IS COMPLETE, THE CO MOST PROGRAM WILL DELIVER WRITTEN NOTICE TO THE COURSE APPLICANT TO SCHEDULE THE COMPLETION OF AN ON-SITE ~~review~~ EVALUATION AND AUDIT OF THE COURSE SEEKING CO MOST PROGRAM APPROVAL. ~~Require and commit that the Instructor-to-Student ration for BRC will conform to the standards set forth in the approved curriculum.~~

8.2.8.1. ~~**8.2.11.2.**~~ Completion of an on-site ~~review~~ EVALUATION AND AUDIT of a proposed Course in its entirety by the CO MOST Program or its agent(s) IS REQUIRED FOR A COURSE TO RECEIVE APPROVAL FROM THE CO MOST PROGRAM. ~~Approval or denial of a Certification of a BRC will be completed no sooner than 90 days following completion of the on-site review requirement by the MOST Program or its agent(s).~~

8.2.8.2. ~~**8.2.6.4.**~~ It is the responsibility of the applicant applying for ~~a~~ CO MOST PROGRAM APPROVAL OF A COURSE ~~BRC Certification~~ to cooperate in good faith with the CO MOST Program ~~or~~ AND its agent(s) to complete these requirements. Delay of THE SITE EVALUATION AND AUDIT ~~these requirements~~ may also delay the CO MOST PROGRAM APPROVAL of a ~~BRC~~ COURSE beyond a single calendar year.

8.2.9. Approval or denial of a CO MOST ~~BRC~~ COURSE APPLICATION will be ISSUED IN WRITING by the CO MOST Program or its agent(s) no sooner than 90 days after the completion of ~~the~~ AN on-site ~~review~~ EVALUATION AND AUDIT.

~~**8.2.10.** A list of all current CSP-approved BRCs will be maintained by the MOST Program Office.~~

~~**8.2.11.** Approval and certification of a BRC by the MOST Program may take up to one (1) calendar year following the submission of a complete application.~~

~~**8.2.11.1.** Completion of a BRC requires completion of an on-site review of the proposed course in its entirety by the MOST Program or its agent(s). It is the responsibility of the person submitting the BRC certification to cooperate in good faith with the MOST Program or its agent(s) to~~

~~complete this requirement. Delay of this requirement may delay the certification of a BRC beyond the aforementioned single calendar year period.~~

~~**8.2.11.2.** Approval or denial of certification of a BRC will be completed no sooner than 90 days following completion of the on-site review requirement by the MOST Program or its agent(s).~~

9. CO MOST PROGRAM VENDOR AND INSTRUCTOR QARS

9.1. CO MOST PROGRAM QARS. CO MOST Program Vendors and Instructors will be subject to periodic QARs by CO MOST Program Office personnel, or its agents to assess the compliance of Vendors and Instructors with all applicable statutes, ~~contractual~~ CO MOST VENDOR AGREEMENT obligations, policies and procedures, APPLICABLE CO MOST PROGRAM APPROVED COURSES, THE CO MOST PNP, and these rules. All CO MOST Program CERTIFIED Vendors and CERTIFIED Instructors are required to comply completely IN GOOD FAITH and participate in all QARs as MAY BE required by the CO MOST Program.

9.1.1. QARs will BE COMPLETED UPON EACH PARTICIPATING CO MOST PROGRAM VENDOR ~~occur~~ at least once ~~a~~ PER year and ~~will~~ include THE evaluation of ALL APPLICABLE ELEMENTS OF THE CO MOST PROGRAM AS EACH ARE DISCUSSED WITHIN THE CO MOST PROGRAM PNP.

~~**9.1.1.1.** Compliance of MOST Vendor reporting requirements;~~

~~**9.1.1.2.** Training Sites;~~

~~**9.1.1.3.** Security and proper use of MOST Course completion cards;~~

~~**9.1.1.4.** Vendors and Instructors utilizing and following the approved and applicable MOST Course curriculum;~~

~~**9.1.1.5.** Compliance of the physical range with the range diagram, including clarity of markings, provided for approval by the MOST Vendor to the MOST Program Office;~~

~~**9.1.1.6.** Adequacy of facility classroom equipment and accommodations;~~

~~**9.1.1.7.** Students and Instructors wear proper protective gear while on the range;~~

~~**9.1.1.8.** The compliance of Motorcycles provided by the MOST Vendor or allowed to be used by students by MOST Instructors when attending a MOST Course with these rules; and~~

~~**9.1.1.9.** Performance and practices of MOST Program Instructors, as applicable and specifically related to:~~

~~**9.1.1.9.1.** MOST Instructor reporting requirements;~~

~~**9.1.1.9.2.** Adherence to and effective communication of the approved and applicable MOST Course curriculum;~~

~~**9.1.1.9.3.** Proper demonstration of range exercises related to the course of instruction;~~

~~**9.1.1.9.4.** Use of proper coaching techniques; and~~

~~**9.1.1.9.5.** Exercise of appropriate awareness and engagement by being in the proper location and position for range exercises.~~

9.2. The CO MOST Program Office or its agents will ~~provide~~ FORWARD copies ~~upon request~~ of any QAR reports to a CO MOST Program Vendor or CO MOST Program Instructor upon which ~~the~~ A QAR ~~was~~ IS completed within 10 BUSINESS DAYS ~~a reasonable amount of time~~ following THE completion AND RECEIPT of the QAR. IF THE CO MOST PROGRAM IS UNABLE TO DELIVER A COPY OF THE COMPLETED QAR WITHIN 10 BUSINESS DAYS OF ITS COMPLETION, THE CO MOST PROGRAM WILL FORWARD A WRITTEN EXPLANATION FOR THE DELAY AND INDICATE A TIMELINE FOR DELIVERY.

9.3. QARs ARE TO BE COMPLETED, DOCUMENTED, AND SUBMITTED CONSISTENT WITH THE CO MOST PROGRAM PNP. AT A MINIMUM, QARs ~~will~~ MUST formally document, provide explanation of, and clearly indicate any area(s) that a CO MOST Program Vendor or Instructor is not in compliance with applicable statutes, rules, CO MOST PROGRAM policies, APPLICABLE CO MOST PROGRAM APPROVED COURSES, THE CO MOST PNP, and/or ~~contractual~~ CO MOST PROGRAM AGREEMENT obligations, and provide direction on how to remedy any noncompliance IDENTIFIED.

9.3.1. QARs may also document other areas of concern requiring ~~the~~ attention of ~~the~~ A CO MOST Program ~~v~~Vendor or Instructor that do not yet WARRANT FORMAL CORRECTION OR rise to the level of ACTUAL noncompliance with applicable statutes AND CO MOST PROGRAM APPROVED COURSES, CO MOST PROGRAM AGREEMENTS, CO MOST PROGRAM CRITERIA, PROCEDURES, AND/OR POLICIES. ~~, rules, policies, and/or contractual obligations, and provide direction on how to remedy any noncompliance.~~

9.4. The CO MOST Program will require a CO MOST Program Vendor or Instructor to remedy any noncompliance with applicable statutes AND CO MOST PROGRAM APPROVED COURSES, CO MOST PROGRAM AGREEMENTS, CO MOST PROGRAM CRITERIA, PROCEDURES, AND/OR POLICIES. ~~, rules, policies, and/or contractual obligations, and address any other issues of concern identified by a QAR within a specified time period or time periods.~~

9.4.1. Any action to remedy any noncompliance or ~~issues~~ AREAS of concern identified by a QAR will be scheduled as directed by the CO MOST Program Office to first address those items related to statute, THESE RULES, ~~rule, policy, or contractual compliance.~~ APPLICABLE CO MOST PROGRAM APPROVED COURSES, APPLICABLE

CO MOST AGREEMENTS, AND THE CO MOST PNP. ANY ACTION TAKEN WILL OCCUR CONSISTENT WITH THESE RULES AND OTHER APPLICABLE CO MOST PROGRAM APPROVED CRITERIA, PROCEDURES, AND POLICIES. ~~The a~~Affected CO MOST Program VendorS or InstructorS will take REMEDIAL ~~such~~ actions at the direction of the CO MOST Program Office.

9.4.2. The CO MOST Program Office may conduct a follow-up QAR to confirm CORRECTION AND compliance.

9.5. In the event a CO MOST Program Vendor fails to adequately correct noncompliance with APPLICABLE CO MOST PROGRAM VENDOR REQUIREMENTS AS DIRECTED BY THE COLORADO MOST PROGRAM OFFICE, the CO MOST Program Office will TAKE ACTION CONSISTENT WITH THE CO MOST PROGRAM ACCOUNTABILITY AND RESOLUTION MATRIX. ~~statues, rules, policies, and/or contractual obligations identified in a QAR, the MOST Program Office will notify the that training by the affected MOST Program Vendor is suspended and no longer valid for purposes of training for endorsements on Colorado driver's licenses.~~

9.5.1. CONSISTENT WITH THE CO MOST PROGRAM ACCOUNTABILITY AND RESOLUTION MATRIX AND APPLICABLE PROVISIONS OF COLORADO STATUTES, THE CO MOST PROGRAM WILL NOTIFY THE CDOR IN WRITING REGARDING THE SUSPENSION OR REVOCATION OF A CO MOST VENDOR BY THE CO MOST PROGRAM AND THE EFFECTIVE DATE(S) THEREOF.

9.5.2. Any training provided by ~~the~~ A SUSPENDED CO MOST PROGRAM VENDOR AS OF AND AFTER THE EFFECTIVE DATE OF SUSPENSION will BE ~~remain~~ invalid until the CO MOST Program Office determines ~~that any~~ THE noncompliance IDENTIFIED has been corrected AND/OR IS NO LONGER PRESENT. ~~And the MOST Program Vendor is no longer suspended or becomes recertified or reinstated, pursuant to these rules.~~ THE CO MOST PROGRAM OFFICE WILL NOTIFY THE CDOR IN WRITING OF ANY DECISION TO LIFT THE SUSPENSION OF OR REINSTATE THE VALID TRAINING STATUS OF A CO MOST PROGRAM VENDOR AND THE EFFECTIVE DATE(S) THEREOF.

9.6. If, in the opinion of the CO MOST Program Office, CSP , or its agent(s), a situation manifests itself during a QAR that poses an immediate threat to the health, safety, or welfare of a student or students, or to personnel on A CO MOST PROGRAM APPROVED COURSE ~~the r~~Range, the CO MOST Program, CSP, or its agent(s) will immediately inform the CO MOST Program Instructor(s) present and direct them to correct the situation.

9.6.1. If ~~the~~ A CO MOST Program Instructor~~(s)~~ OR INSTRUCTORS fail to adequately address the threat identified, the CO MOST Program, CSP, or its agent(s) ~~will~~ have the discretion to immediately SUSPEND OR terminate the CO MOST APPROVED Course until ~~such time~~ the issue is adequately addressed.

10. DENIAL, LIMITATION, SUSPENSION, REVOCATION, AND REINSTATEMENT OF CO MOST PROGRAM VENDORS OR INSTRUCTORS ~~CERTIFICATIONS~~

10.1. NOTICE OF CO MOST PROGRAM VENDOR OR INSTRUCTOR DENIAL, LIMITATION, REVOCATION, SUSPENSION OR ~~AND~~ REINSTATEMENT. ~~**OF A MOST CERTIFICATION**~~ A CO MOST Program Vendor or CO MOST Program Instructor will be notified by the CO MOST Program Office in writing of any ~~certification~~ denial, limitation, suspension, revocation, or reinstatement action AFFECTING THE PARTICIPATION OF EITHER IN THE CO MOST PROGRAM, consistent with §24-4-104, CRS.

10.1.1. CONSISTENT WITH THE CO MOST PROGRAM ACCOUNTABILITY AND RESOLUTION MATRIX AND APPLICABLE PROVISIONS OF COLORADO STATUTES, THE CO MOST PROGRAM WILL NOTIFY THE CDOR IN WRITING REGARDING THE SUSPENSION OR REVOCATION OF A CO MOST PROGRAM INSTRUCTOR BY THE CO MOST PROGRAM AND THE EFFECTIVE DATES THEREOF.

10.1.2. ANY TRAINING PROVIDED BY A CO MOST PROGRAM INSTRUCTOR AS OF AND AFTER THE EFFECTIVE DATE(S) OF SUSPENSION OR REVOCATION WILL BE INVALID UNTIL THE CO MOST PROGRAM OFFICE DETERMINES THE NONCOMPLIANCE IDENTIFIED HAS BEEN CORRECTED AND/OR IS NO LONGER PRESENT. THE CO MOST PROGRAM OFFICE WILL NOTIFY THE CDOR IN WRITING OF ANY DECISION TO LIFT THE SUSPENSION OR REINSTATE THE VALID TRAINING STATUS OF A CO MOST PROGRAM INSTRUCTOR, AND THE EFFECTIVE DATE(S) THEREOF.

10.2. CO MOST PROGRAM VENDOR DENIAL, LIMITATION, SUSPENSION, AND REVOCATION ~~**OF CERTIFICATIONS**~~**.** The CO MOST Program Office may deny, limit, suspend, or revoke the ~~certification~~ CO MOST PROGRAM CERTIFICATION of a CO MOST Program Vendor for any action or omission violating the purposes, scope~~,~~ or ~~terms,~~ EFFECT of applicable state law, THESE RULES, CO MOST Program ~~contractual~~ agreements, CO MOST Program policies, PROCEDURES AND CRITERIA, THE CO MOST PNP AND APPLICABLE CO MOST PROGRAM APPROVED COURSES ~~or these rules~~. Grounds for denial, limitation, suspension, or revocation of a CO MOST PROGRAM Vendor ~~Certification~~ may include:

10.2.1. Knowingly presenting or allowing to be presented to the CO MOST Program ~~Office~~ any false or misleading information relating to ~~a Certification.~~ CO MOST PROGRAM VENDOR CERTIFICATION ~~requirement~~ or CO MOST PROGRAM VENDOR compliance pursuant to these rules;

10.2.2. Permitting or engaging in any fraud or fraudulent practice concerning an applicant for a Motorcycle license, WAIVER, or permit;

10.2.3. Knowingly or recklessly disregarding, changing, or failing to comply with any requirements of the rules or other applicable lawS and standards relevant to THE CO MOST PROGRAM, subject to the provisions of §24-5-101, CRS;

10.2.4. Failing to correct known non-compliance identified by a QAR within the ~~time~~ RESPONSE PERIOD ~~provided~~ DEFINED ~~by~~ THROUGH the CO MOST PROGRAM ~~CSP~~;

10.2.5. Having two (2) QARs identifying consistent ~~or major programs~~, REPETITIVE, AND/OR DIFFERENT INFRACTIONS OF SIMILAR SEVERITY RISING TO A LEVEL OF non-compliance within a six (6) month period;

10.2.6. Obtaining ~~a~~ CO MOST Program VENDOR CERTIFICATION based upon false or incorrect information or mistake;

10.2.7. Engaging in a pattern or a continuing course of misconduct of harassing, DISCRIMINATORY, or offensive behavior with a CO MOST PROGRAM student, other CO MOST Program Vendor(s), CO MOST OR MOST Program Instructors, the CO MOST Program Office, CSP, or its agents; OR

~~**10.2.8.** Identification of a failure of the MOST Program Vendor to comply with previously program-sponsored MOST Course student tuition subsidy benefits;~~

10.2.8. THE VIOLATION OF ANY APPLICABLE PROVISION OF THE CO MOST PROGRAM PNP. ~~The Certification of any MOST Program Vendor may be summarily suspended, pursuant to §24-4-104(4), CRS.~~

10.2.9. ~~The Certification of any~~ ANY CO MOST Program Vendor may be summarily suspended, pursuant to §24-4-104 (4), CRS.

10.3. **CO MOST PROGRAM INSTRUCTOR DENIAL, LIMITATION, SUSPENSION, AND REVOCATION ~~OF MOST PROGRAM INSTRUCTOR CERTIFICATIONS~~.** The CO MOST Program may deny, limit, suspend, or revoke ~~the certification of~~ a CO MOST Program INSTRUCTOR for any action or omission violating the purposes, scope, or ~~terms~~ EFFECT of applicable state law, THESE RULES, CO MOST Program ~~contractual~~ agreements, CO MOST Program policies, PROGRAMS AND CRITERIA, THE CO MOST PNP, AND/OR APPLICABLE CO MOST PROGRAM APPROVED COURSES. ~~or these rules.~~ Grounds for denial, limitation, suspension, or revocation may include:

10.3.1. Offenses pursuant to §43-5-503 (3), CRS;

10.3.2. Knowingly presenting or allowing to be presented to the CO MOST Program Office any false or misleading information related to a ~~certification~~ CO MOST PROGRAM INSTRUCTOR requirement or compliance pursuant to these rules;

10.3.3. Permitting or engaging in any fraud or fraudulent practice concerning an application for a ~~m~~Motorcycle license, WAIVER, or permit;

10.3.4. Knowingly or recklessly disregarding, changing, or failing to comply with any requirements of these rules or other applicable laws or standards relevant to THE CO MOST PROGRAM, subject to the provisions of §24-5-101, CRS;

10.3.5. Failing to correct known non-compliance identified by a QAR within the ~~time~~ RESPONSE period ~~by~~ THROUGH the ~~CSP~~ CO MOST PROGRAM.

10.3.6. Having two (2) QARs identifying CONSISTENT, REPETITIVE, and/or different infractions of similar severity ~~of program and major~~ RISING TO A LEVEL OF noncompliance within a six (6) month period;

10.3.7. Obtaining a CO MOST Program Instructor Certification based upon false or incorrect information or mistake;

10.3.8. Engaging in a pattern or a continuing course of conduct of harassing, DISCRIMINATORY or offensive behavior with a CO MOST PROGRAM student, CO MOST Program Vendor(s), other CO MOST AND MOST Program Instructors, the CO MOST Program Office, CSP, or its agents;

10.3.9. ~~Having an incident of b~~Being impaired by alcohol and/or drugs while instructing or being present on a Training Site or Temporary Training Site while ACTIVELY DELIVERING OR PERFORMING AS AN INSTRUCTOR OF A CO MOST APPROVED COURSE; ~~a MOST Course is being taught; or~~

10.3.10. Failing to attend the required minimum of one (1) CO MOST PROGRAM APPROVED PDW per year ~~without written aapproval of exemption secured in advance of the PDW from the MOST Program Office.~~ AND/OR ANY OTHER REQUIRED CO MOST PROGRAM ANNUAL MEETING, CONFERENCE, OR CO MOST PROGRAM APPROVED TRAINING, CONSISTENT WITH THE TERMS AND CONDITIONS SET FORTH WITHIN THE CO MOST PNP;

10.3.11. FAILING TO TEACH THREE (3) COMPLETE CO MOST PROGRAM APPROVED COURSES, OR THE EQUIVALENT THEREOF WITHIN THE ANNUAL CO MOST PROGRAM INSTRUCTOR CERTIFICATION PERIOD CONSISTENT WITH THESE RULES; AND ~~The Certification of any MOST Program Instructor may be summarily suspended, pursuant to §24-4-104 (4), CRS.~~

10.3.12. THE VIOLATION OF ANY APPLICABLE PROVISION OR REQUIREMENTS SET FORTH WITHIN THE CO MOST PROGRAM PNP.

10.3.13. ~~The Certification of a~~Any CO MOST Program Instructor may be summarily suspended, pursuant to §24-4-104 (4), CRS.

10.4. CO MOST PROGRAM REINSTATEMENT OF CO MOST VENDORS OR INSTRUCTORS~~ ~~LIMITED, SUSPENDED, OR REVOKED CERTIFICATIONS~~. UPON DETERMINATION BY THE CHIEF, ~~T~~the CO MOST Program Office may reinstate a CO MOST Program Vendor or ~~MOST Program~~ Instructor that has been limited, suspended, or revoked.

10.4.1. The Chief ~~or his or her designee~~ will be responsible for determining when it is appropriate to reinstate a CO MOST Program Vendor or CO MOST Program Instructor.

10.4.2. Reinstated CO MOST Program Vendors or CO MOST Program Instructors will be notified in writing ~~of any certification reinstatement~~, DELIVERED TO THE LAST KNOWN MAILING ADDRESS(ES) FOR A VENDOR OR INSTRUCTOR. IF AVAILABLE, NOTICE OF REINSTATEMENT WILL ALSO BE EMAILED TO THE LAST KNOWN

EMAIL ADDRESS FOR A CO MOST VENDOR OR INSTRUCTOR PROVIDED TO THE CO MOST PROGRAM OFFICE.

10.5. REINSTATEMENT OF A CO MOST PROGRAM VENDOR ~~CERTIFICATION~~. In determining whether it is appropriate to reinstate a CO MOST Program Vendor, the Chief ~~or his or her designee~~ may consider:

10.5.1. All relevant circumstances, including the performance and ~~satisfaction~~ COMPLETION of any remedial actions DIRECTED BY THE CO MOST PROGRAM OFFICE ~~required by the~~ CONSISTENT WITH THE CO MOST PROGRAM ACCOUNTABILITY AND RESOLUTION MATRIX ~~Program Office, as contemplated by these rules~~; and

10.5.2. The CO MOST PROGRAM Vendor's compliance with all APPLICABLE requirements set forth within these rules, RELEVANT STATUTES, CO MOST PROGRAM AGREEMENTS, APPLICABLE CO MOST PROGRAM APPROVED COURSES, AND THE CO MOST PNP.

10.6. REINSTATEMENT OF A CO MOST PROGRAM INSTRUCTOR ~~CERTIFICATION~~. In determining whether it is appropriate to reinstate a CO MOST Program Instructor, the Chief ~~or his or her designee~~ may consider:

10.6.1. All relevant circumstances, including the performance and ~~satisfaction~~ COMPLETION of any remedial actions by the Instructor DIRECTED ~~required~~ by the CO MOST Program Office CONSISTENT WITH THE CO MOST PROGRAM ACCOUNTABILITY AND RESOLUTION MATRIX ~~as contemplated by these rules~~;

10.6.2. Attendance and successful completion of a CO MOST PROGRAM APPROVED Instructor Training Course or, at minimum, THE successful completion of remedial training as directed by the CO MOST Program Office, CONSISTENT WITH THE CO MOST PROGRAM COLORADO-SPECIFIC INSTRUCTOR COURSE REQUIREMENTS DETAILED WITHIN SECTION 7 OF THESE RULES; AND

10.6.3. THE CURRENT COMPLIANCE OF A CO MOST INSTRUCTOR WITH ALL REASONABLY APPLICABLE CO MOST PROGRAM INSTRUCTOR REQUIREMENTS.– ~~To be considered in support of reinstatement, a MOST Program Instructor must successfully complete all appropriate requirements and be in compliance with these rules.~~

11. APPEAL OF CO MOST PROGRAM VENDOR OR INSTRUCTOR DENIAL, LIMITATION, SUSPENSION, OR REVOCATION ~~OF MOST CERTIFICATIONS~~

11.1. Any denial, limitation, suspension, or revocation ~~of~~ AFFECTING a CO MOST PROGRAM Vendor or CO MOST PROGRAM Instructor ~~Certification required by~~ PURSUANT TO these rules is subject to the applicable hearing provisions of §24-4-105, CRS.

12. PUBLICATIONS AND STANDARDS INCORPORATED BY REFERENCE

12.1. All publications, standards, guidelines, and rules adopted and incorporated by reference in these rules are on file and available for public request and inspection by contacting the CSP CENTRAL RECORDS UNIT (CRU) OR THE CO MOST Program Coordinator at 15055 S. Golden Road, Golden, CO., 80401-3990.

12.1.1. These rules do not include later amendments or editions of any publications, standards, guidelines, or rules other than approved changes in CO MOST Program APPROVED ~~Curricula~~ COURSES, THE CO MOST PNP, CO MOST PROGRAM AGREEMENTS, OR THE CO MOST ACCOUNTABILITY AND RESOLUTION MATRIX, incorporated by reference.

12.1.2. All publications, standards, guidelines, and rules adopted and incorporated by reference in these rules will be provided to and made available for examination at any state publications depository library as required by §24-4-103 (12.5), CRS. The following publications and standards referenced herein are adopted and promulgated as rules and regulations for the CO MOST Program ~~in accordance~~ CONSISTENT with §24-4-103 (12.5), CRS.

12.1.2.1. NHTSA's Model Standards for Entry-Level Motorcycle Training, HTTPS://WWW.NHTSA.GOV/SITES/NHTSA/DOT/GOV/FILES/DOCUMENTS/811503.PDF.

12.1.2.2. NHTSA Model National Administrative Standards for State Motorcycle Rider Training, (Report No. DOT HS 812071), Washington, DC: Author. This document is also available for download online at: ~~HTTPS://WWW.NHTSA.GOV/SITES/NHTSA/DOT/GOV/FILES/DOCUMENTS/81201-MODELNATLADMINMOTORCYCLE.PDF~~. HTTP://WWW.NHTSA.GOV/STATICFILES/NTI/PDF/811503.PDF

12.1.2.3. CO MOST PNP, GOLDEN, COLORADO: CSP CO MOST PROGRAM. THIS DOCUMENT IS AVAILABLE ONLINE AT: HTTPS://WWW.COMOST.COM.

12.1.2.4. CO MOST PROGRAM ACCOUNTABILITY AND RESOLUTION MATRIX, GOLDEN, COLORADO: CSP CO MOST PROGRAM. THIS DOCUMENT IS AVAILABLE ONLINE AT: HTTPS://WWW.COMOST.COM.

12.1.2.5. CO MOST PROGRAM AGREEMENT (WITH TERMS AND CONDITIONS), GOLDEN, COLORADO: CSP CO MOST PROGRAM. THIS DOCUMENT IS AVAILABLE ONLINE AT: HTTPS://WWW.COMOST.COM.

12.1.2.6. CO MOST PROGRAM INSTRUCTOR CANDIDATE APPLICATION (WITH TERMS AND CONDITIONS), GOLDEN, COLORADO: CSP CO MOST PROGRAM. THIS DOCUMENT IS AVAILABLE ONLINE AT: HTTPS://WWW.COMOST.COM.

12.1.2.7. CO MOST PROGRAM INSTRUCTOR APPLICATION (NEW AND RENEWAL, WITH TERMS AND CONDITIONS), GOLDEN, COLORADO: CSP MOST

PROGRAM. THIS DOCUMENT IS AVAILABLE ONLINE AT: HTTPS://WWW.COMOST.COM.

12.2. ~~**12.1.3.**~~ The CO MOST Program ~~shall~~ maintainS copies of the complete texts of each of the aforementioned adopted standards and ~~make~~ THESE TEXTS ~~them~~ ARE available for public inspection during regular business hours. Interested parties may inspect the referenced incorporated materials and/or obtain copies of the adopted standards for a reasonable fee by contacting the CSP CRU, 700 KIPLING ST., LAKEWOOD, CO., 80215.– ~~MOST Program, 15055 S. Golden Road, Golden, CO.~~ Copies of the adopted standards are also available from the organization of original issue:

12.2.1. National Highway Traffic Safety Administration, (NHTSA), 1200 New Jersey Ave., SE, Washington, DC 20590.

12.2.2. CSP CO MOST PROGRAM OFFICE, 15055 S. GOLDEN ROAD, GOLDEN, CO. 80401-3990.

12.3. ~~**12.1.4.**~~ These rules are available to the public and may be downloaded from the CSP CO MOST Program website.

13. SEVERABILITY

13.1. IF ANY PROVISION OF THESE RULES OR THE APPLICABILITY THEREOF TO ANY PERSON OR CIRCUMSTANCE IS DETERMINED TO BE UNLAWFUL OR INVALID, THE REMAINING PROVISIONS OF THESE RULES WILL NOT BE AFFECTED ABSENT A SPECIFIC REFERENCE THERETO.

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Motor Vehicles

CCR number

1 CCR 204-30

Rule title

1 CCR 204-30 DRIVER'S LICENSE-DRIVER CONTROL 1 - eff 12/15/2021

Effective date

12/15/2021

RULE 7 - RULES AND REGULATIONS FOR THE COMMERCIAL DRIVER'S LICENSE (CDL) PROGRAM

A. BASIS, PURPOSE, AND STATUTORY AUTHORITY

(1) The Department is authorized to adopt rules and regulations as necessary for the Commercial Driver's License Program in accordance with sections 24-4-103, 42-2-111(1)(b), 42-2-114.5, 42-2-403, 42-2-406 (3 through 7), and 42-2-407(8), C.R.S.

(2) The purpose of these rules is to promote the safety and welfare of the citizens of Colorado by establishing standards and requirements for licensing commercial driver's license testing units and testers, to establish fees for such licensing and maximum fees that may be charged by such testing units, to establish certain procedures and standards for issuing and possessing commercial driver's licenses, and to ensure compliance with state and federal requirements.

B. INCORPORATION BY REFERENCE OF FEDERAL RULES

(1) Adoption: The Department incorporates by reference the Federal Motor Carrier Safety Regulations ("FMCSR"), 49 CFR parts 171, 172, and 300-399, Qualifications and Disqualification of Drivers, 26 USC Section 501(c) (2015), and the Colorado Department of Public Safety, Colorado State Patrol, Rules and Regulations Concerning Minimum Standards for the Operation of Commercial Vehicles at 8 CCR 1507.1. Material incorporated by reference in this rule does not include later amendments to or editions of the incorporated material.

(2) "49 CFR", when referenced in this rule, means the Federal Regulations published in the Code of Federal Regulations ("CFR"), Title 49, parts 171, 172, and 300-399 (October 1, 2016) by the National Archives and Records Administration's Office of the Federal Register and Government Publishing Office, and available at the original issuing agencies the Federal Motor Carrier Safety Administration and National Highway and Traffic Safety Administration, both located at 1200 New Jersey Avenue SE, Washington, D.C., 20590. The Federal rules and regulations referenced or incorporated in this rule, and 8 CCR 1507-1, are on file and available for inspection by contacting the Driver License Section of the Department of Revenue in person at, 1881 Pierce Street, Room 128, Lakewood, Colorado, 80214, or by telephone at 303-205-5600, and copies of the materials may be examined at any state publication depository library.

C. DEFINITIONS

(1) AAMVA: American Association of Motor Vehicle Administrators is a voluntary, nonprofit, tax exempt, educational unit that represents state and provincial officials in the United States and Canada who administer and enforce motor vehicle laws CODE OF COLORADO REGULATIONS 1 CCR 204-30 Division of Motor Vehicles.

(2) CDL: "Commercial Driver's License" as defined in section 42-2-402(1), C.R.S.

(3) CDL Compliance Unit: The administrative unit contained within the Department charged with the oversight and regulation of CDL third party testing units and testers on AAMVA's CDL skills testing.

(4) CDL Passenger Vehicle: A passenger vehicle designed to transport 16 or more passengers, including the driver.

(5) CDL Skills Test: “Driving tests” as referenced in section 42-2-402, C.R.S. and consists of the Vehicle Inspection, Basic Control Skills, and the Road Test.

(6) CDL Vehicle Class: A group or type of vehicle as defined in Part B of this Rule.

(7) CLP – Commercial Learners Permit: The permit issued by the Department entitling the driver, while having such permit in his/her immediate possession, to drive a commercial motor vehicle of certain classes and/or endorsement(s), and/or restriction(s) upon the highways with a driver that possesses a CDL with the same class and/or endorsements or higher, as the CLP holder.

(8) CMV: “Commercial Motor Vehicle” as defined in section 42-2-402(4), C.R.S.

(9) C.R.S.: Colorado Revised Statutes.

(10) CSTIMS - Commercial Skills Test Information Management System: Web-based system used by states to manage the CDL Skills Test portion of the CDL licensing process.

(11) Disqualifications: The suspension, revocation, cancellation, or any other withdrawal by the Department of a person’s privilege to drive a CMV or a determination by the FMCSA under the rules of practice for motor carrier safety contained in 49 CFR, that a person is no longer qualified to operate a CMV under 49 CFR; or the loss of qualification that automatically follows conviction of an offense listed in 49 CFR.(12)

(12) Designed to Transport: The manufacturer’s original rated capacity for the vehicle.

(13) ELDT: Entry Level Driver Training - FMCSA’s Entry Level Driver Training (ELDT) regulations set the baseline for training requirements for entry-level drivers. This includes those applying to obtain a Class A or Class B CDL for the first time, upgrade an existing Class B CDL to a Class A CDL or obtain a school bus (S), passenger (P), or hazardous materials (H) endorsement for the first time.

(14) Endorsements: The letter indicators below added to a CDL and/or CLP indicate successful completion of the appropriate knowledge, and if applicable, the CDL Skills Test, and allow the operation of a special configuration of vehicle(s):

a) 3 = Three wheel motorcycle (not allowed on a CLP per 49 CFR)

b) H = Hazardous materials (Not allowed on a CLP per 49 CFR)

c) M = Motorcycle (not allowed on a CLP per 49 CFR)

d) N = Tank vehicles

e) P = CDL Passenger vehicle

f) S = School buses

g) T = Double/triple trailers (not allowed on a CLP per 49 CFR)

h) X = Combination of tank vehicle and hazardous materials (Not allowed on a CLP per 49 CFR)

(15) Exemptions: Regulatory relief given to a person or class of persons normally subject to regulations.

(16) FMCSA: Federal Motor Carrier Safety Administration is an agency within the USDOT.

(17) FMCSR: Federal Motor Carrier Safety Regulations (49 CFR).

(18) GCWR: Gross Combination Weight Rating is the value specified by the manufacturer as the maximum loaded weight of the combination vehicle.

(19) Government agency: A state, county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof organized pursuant to law and any separate entity created by intergovernmental contract cooperation only between or among the state, county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof.

(20) Intrastate Driver: A driver with a CDL restricted to operating a CMV within the boundaries of Colorado, and not authorized to transport items of interstate commerce or hazardous materials.

(21) Interstate Commerce: Trade, traffic, or transportation in the United States between a place in a state and a place outside of such state (including a place outside of the United States), or between two places in a state through another state or a place outside of the United States, or between two places in a state as part of trade, traffic, or transportation originating or terminating outside the state or the United States.

(22) Interstate Driver: A CDL holder authorized to cross state lines and transport interstate commerce while operating a CMV.

(23) Intrastate Commerce: Trade, traffic, or transportation in any state that is not described in the term “interstate commerce.”

(24) Knowledge Test: A written test that meets the federal standards contained in 49 CFR.

(25) Non-Profit: An organization filing with the United States Code 26 USC Section 501(c).

(26) Paved Area: A paved area is a surface made up of materials and adhesive compounds of a sufficient depth and strength that the area provides a durable, solid, smooth surface upon which an applicant may demonstrate basic vehicle control skills.

(27) Public Transportation Entity: A mass transit district or mass transit authority authorized under the laws of this state to provide transportation services to the general public.

(28) Restrictions: Prohibits the operation of certain types of vehicles or restricts operating a CMV to within designated boundaries:

a) E = No Manual Transmission

b) K = Intrastate only

c) L = No Air Brake equipped CMV

d) M = No Class A Passenger Vehicle

e) N = No Class A and B Passenger Vehicle

f) O = No Tractor-Trailer

g) P = No Passenger

h) X = No Liquid in Tank

i) V = Medical Variance (49 CFR)

j) Z = Restricted from operating a CMV with full air brakes

(29) Self Certification Choice:

- Non-excepted interstate. A person's certification that he or she operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 CFR, and is required to be medically examined and certified pursuant to 49 CFR.
- Excepted interstate. A person's certification must certify that he or she operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 CFR from all or parts of the qualification requirements of 49 CFR, and is therefore not required to be medically examined and certified pursuant to 49 CFR.
- Non-excepted intrastate. A person's certification that he or she operates only in intrastate commerce and therefore is subject to Colorado driver qualification requirements.

- Excepted intrastate. A person's certification must certify that he or she operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the Colorado driver qualification.

(30) Shadow Skills Test: Administered skills tests required of the new examiner candidate.

(31) TPR: Training Provider Registry - The Training Provider Registry supports FMCSA's goal of ensuring that only qualified drivers are behind the wheel of commercial motor vehicles (CMVs). The Registry will connect entry-level drivers with training providers who can equip them with the knowledge to safely operate CMVs for which a commercial learner's permit (CLP) or commercial driver's license (CDL) is required.

(32) USDOT: United States Department of Transportation.

D. DRIVER LICENSING REQUIREMENTS

(1) Each applicant applying for a CDL or CLP must be a resident of Colorado, at least 18 years of age, and comply with the testing and licensing requirements of the Department.

a) The CDL and CLP will indicate the class of license, any endorsements, and any restrictions for that individual. The CDL is valid for the operation of a non-CMV including a motorcycle with the appropriate motorcycle endorsement on the license.

b) A Colorado CDL may be issued upon surrender of a valid CDL from another state without additional testing except that an applicant must test for a hazardous material endorsement.

c) An applicant with an out-of-state CLP cannot transfer that CLP to Colorado but must apply for a Colorado CLP and take all applicable CDL knowledge tests (49 CFR).

(2) Each applicant applying is required to make one of the following applicable self-certifications for the type of commercial driving the individual intends to do (49 CFR):

- Non-excepted interstate.
- Excepted interstate.
- Non-excepted intrastate.
- Excepted intrastate.

(3) Each applicant must meet the medical and physical qualifications under 49 CFR. Each applicant must submit their medical examiner's certificate and, if applicable, any federal variance or state medical waiver or skills performance evaluation to a driver license office (49 CFR).

(4) Each initial applicant for a Class A CDL who has attended a commercial driving school certified for approval by the Private Occupational Schools Division of the Department of Higher Education must affirm on an affidavit provided by the Department, to the testing unit that the initial

applicant successfully passed training on the recognition, prevention, and reporting of human trafficking prior to taking the CDL skills test.

(5) Effective February 7, 2022, each applicant must complete ELDT prior to taking any applicable skills or knowledge tests including those applying to:

- Obtain a Class A or Class B CDL for the first time;
- Upgrade an existing Class B CDL to a Class A CDL; or
- Obtain a school bus (S), passenger (P), or hazardous materials (H) endorsement for the first time.

The ELDT regulations are not retroactive; the entry-level driver training requirements do not apply to individuals holding a valid CDL or an S, P, or H endorsement issued prior to February 7, 2022. If an applicant who obtains a CLP prior to February 7, 2022, obtains a CDL before the CLP or renewed CLP expires, the applicant is not subject to the ELDT requirements. Any individual who meets one of the exceptions for taking a skills test in 49 CFR Part 383 is also exempt from the ELDT requirements.

E. ENDORSEMENTS

(1) T-Double/Triple Trailers: Required to operate a CMV used for drawing two or more vehicles or trailers with a GCWR that is 26,001 lbs. or more and combined GVWR of the vehicles being towed is more than 10,000 lbs.

(2) P-Passenger: Required to operate a vehicle designed by the manufacturer to transport 16 or more passengers, including the driver.

(3) N-Tank Vehicles: Required to operate a vehicle that hauls liquid or liquid gas in a permanently mounted cargo tank rated at 119 gallons or more or a portable tank rated at 1,000 gallons or more.

(4) H-Hazardous Materials: Required to transport materials that require the motor vehicle to display a placard pursuant to the hazardous materials regulations.

(5) S-School Buses: Required to operate a school bus as defined in section 42-1-102(88), C.R.S.

(6) X-Combination Tank/Hazmat: Required to operate vehicles that meet the definition of (3) and (4) above.

F. RESTRICTIONS

(1) Intrastate: The letter “K” is added to the CDL of a driver between the ages of 18 through 20, to an individual who has been issued a valid medical waiver from the Colorado State Patrol (8 CCR 1507-1) or who self- certifies to excepted or not excepted intrastate driving (49 CFR). Under this CDL restriction, the driver must not:

a) Operate a CMV outside Colorado state boundaries; or

b) Transport interstate commerce as defined in 49 CFR.

The waiver from Colorado State Patrol is valid only while the driver is transporting commodities other than bulk hazardous materials, as defined in 49 CFR or commodities with a hazard class identified in 49 CFR, or commodities subject to the "Poison by Inhalation Hazard" shipping description in 49 CFR.

(2) Air brake: The letter "L" is added to the CDL/CLP of an individual restricted from operating vehicles equipped with air brakes.

a) An individual may apply for removal of the "L" restriction after having successfully completed the air brake knowledge test and the CDL Skills Test in a vehicle equipped with air brakes that is representative of the CDL vehicle class.

b) When taking the CDL Skills Test in a vehicle equipped with air brakes, the applicant must have in his/her immediate possession a CLP without the "L" restriction.

(3) Transmission: The letter "E" is added to the CDL of an individual restricted from operating vehicles equipped with a standard transmission.

a) An individual may apply for removal of the "E" restriction after having successfully completed the CDL Skills Test in a vehicle equipped with a standard transmission that is representative of the CDL vehicle class.

b) When taking the CDL Skills Test in a vehicle equipped with a standard transmission, the applicant must have in his/her immediate possession a CLP without the "E" restriction.

(4) Class B Bus: The letter "M" is added to the CDL of an individual restricted from operating a Class A Passenger vehicle (49 CFR).

a) An individual may apply for removal of the "M" restriction after having successfully completed the CDL Skills Test in a Class A Passenger vehicle.

b) Before taking the CDL Skills Test in a Class A Passenger vehicle, the applicant must have in his/her immediate possession a CLP without the "M" restriction.

(5) Class C Bus: The letter "N" is added to the CDL of an individual restricted from operating a Class B Passenger vehicle (49 CFR).

a) An individual may apply for removal of the "N" restriction after having successfully completed the CDL Skills Test in a Class B Passenger vehicle.

b) Before taking the CDL Skills Test in a Class B Passenger vehicle, the applicant must have in his/her immediate possession a CLP without the "N" restriction.

(6) No Tractor-Trailer: The letter "O" is added to the CDL of an individual restricted from operating a vehicle equipped with a 5th wheel type coupling system (49 CFR).

a) An individual may apply for removal of the “O” restriction after having completed the CDL Skills Test in a tractor/semi-trailer combination vehicle equipped with a 5th wheel type coupling system.

b) When taking the CDL Skills Test in a tractor/semi-trailer combination vehicle equipped with a 5th wheel type coupling system, the applicant must have in his/her immediate possession a CLP without the “O” restriction.

(7) No Passengers: The letter “P” is added to the CLP of an individual restricted from operating a Passenger vehicle with passengers.

a) The “P” restriction is removed by successfully completing the CDL Skills Test in a Passenger vehicle.

(8) No Cargo in a Tank Vehicle: The letter “X” is added to the CLP of an individual restricted from operating a Tank vehicle containing liquid or gas.

a) An individual may apply to have the “X” restriction removed after having successfully completed the CDL Skills Test.

(9) Medical, Variance/Skills Performance Evaluation: The letter “V” will be added to any CLP or CDL for individuals who have been issued a federal medical variance (49 CFR).

(10) Air brake: The letter “Z” is added to the CDL/CLP of an individual restricted from operating vehicles equipped with full air brakes.

a) The “Z” restriction is removed by successfully completing the air brake knowledge test and the CDL Skills Test in a vehicle equipped with air brakes that is representative of the CDL vehicle class.

b) When taking the CDL Skills Test in a vehicle equipped with air brakes, the applicant must have in his/her immediate possession a CLP without the “Z” restriction.

G. EXEMPTIONS

(1) FMCSR 49 CFR Applicability: Authorizes the state to grant certain groups exceptions from the CDL requirements.

a) FMCSR – 49 CFR: Exception for individuals who operate CMVs for military purposes.

b) FMCSR – 49 CFR: Exception for operators of farm vehicles, as defined at section 42-2-402(4)(b)(III), C.R.S. and firefighters and other persons who operate CMVs that are necessary to the preservation of life or property, or the execution of emergency governmental functions, or that are equipped with audible and visual signals and are not subject to normal traffic regulation.

c) FMCSR – 49 CFR: Exception for drivers employed by an eligible unit of local government, operating a commercial motor vehicle within the boundaries of that unit for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting, if the properly licensed employee who ordinarily operates a commercial motor vehicle for these purposes is unable to operate the vehicle or if the employing governmental entity determines that a snow or ice emergency exists that requires additional assistance.

d) FMCSR – 49 CFR: Restricted CDL for certain drivers in farm-related service industries.

(2) FMCSR 49 CFR specifies the exceptions to the physical qualifications for individuals engaged in custom harvesting operations.

H. ENTITY ELIGIBLE TO APPLY FOR A CDL TESTING UNIT LICENSE

(1) The Department may authorize a testing unit to administer the CDL Skills Test on behalf of the Department if such training and testing is equal to the training and testing of the Department.

(2) A CDL Testing Unit must enter into a written contract with the Department and agree to:

a) Maintain an established place of business in Colorado with a vehicle fleet of no less than three CMVs owned, leased or registered to the testing unit, the business owner, or an employee of the business;

b) Maintain an adult education occupational business license with the Division of Private Occupational Schools, a division of the Colorado Department of Higher Education and be listed in the TPR; or

c) Be a government agency, public school district, private or parochial school, or other type of pre- primary, primary, or secondary school transporting students from home to school or from school to home.

I. CDL TESTING UNIT REQUIREMENTS

(1) An entity must apply for and receive a CDL testing unit license from the Department in order to administer CDL Skills Tests. The CDL testing unit and each driving tester license expires on June 30th of each year. The licenses for both the testing unit and driving tester(s) must be displayed in the place of business.

a) Testing unit and driving tester license fees are waived for non-commercial testing units and driving testers that only provide public transportation, and that do not test outside of their unit.

b) Public transportation entities that test outside of their unit or that do not provide public transportation only, must submit the appropriate fees.

c) If a license is not renewed on or before June 30th, the initial fees will apply. Testing unit and driving tester license(s) may be suspended or inactivated until appropriate fees and documentation are submitted.

d) Licenses can be renewed up to 60 days prior to June 30th of each year.

(2) The testing unit is not permitted to guarantee issuance of a Commercial Driver's License or to suggest that training will guarantee issuance of a Commercial Driver's License.

(3) Testing units must only test if they have a current testing unit license issued by the Department.

(4) Testing units must ensure that each driving tester has a valid tester license issued by the Department when he or she administers a CDL Skills Test.

(5) The testing unit must notify the Department in writing within 3 business days of the termination or departure from the testing unit of any driving tester.

(6) A testing unit's place of business must be a separate establishment and may not be part of a home. The unit's physical address must not be a post office box.

(7) The testing unit must have written permission from the landowner to administer the CDL vehicle basic control skills exercises on areas not owned by the testing unit. This written permission must be submitted to the Department for approval prior to testing and renewed annually.

(8) The testing unit must maintain at least one employee who is licensed as a CDL driving tester.

(9) The testing unit must ensure that the unit's driving tester(s) follow the Department's standards for administering the CDL Skills Test.

(10) The testing unit must ensure that the unit's driving tester(s) complete all CDL third party testing forms correctly.

(11) The testing unit must ensure that the unit's driving tester(s) administer the CDL Skills Test to applicants in a vehicle equal to or lower than the class and/or endorsement, and/or restriction on applicant's CDL instruction permit or CDL.

(12) Once a new driving tester candidate has passed the required 8 day new CDL third party tester's training course , the testing unit must ensure that within thirty (30) days the new tester candidate:

a) Applies for his/her third party testers license;

b) Administers two (2) shadow skills tests while accompanied by a licensed driving tester who shall monitor the test and compare pass-fail results with those of the new driving tester candidate; and

c) Completes an application for the fingerprint/background check.

(13) The testing unit is responsible for ensuring that driving testers attend all mandated training provided by the CDL Compliance Unit. Failure of driving testers to attend scheduled training may result in the suspension of testing privileges for the testing unit and the tester.

(14) The testing unit must schedule all tests utilizing CSTIMS. The testing unit or driving tester must notify the CDL Compliance Unit of all canceled tests via CSTIMS as soon as the testing unit or driving tester is aware of the cancellation. The testing unit or driving tester must notify the Department of all tests scheduled or schedule changes via CSTIMS at least three (3) days in advance of the test. Tests not administered due to weather conditions or a vehicle failure may be rescheduled with approval from a CDL Compliance Unit.

a) The testing unit is not permitted to schedule an applicant more than once within any three (3) day period.

b) Testing units must identify the applicant in Scheduled Comments in CSTIMS as public, employee, or student.

c) The test must begin within 15 minutes before and no later than 15 minutes after its scheduled time. The test begins when the driving tester reads the vehicle inspection overview to the applicant.

(15) The testing unit must ensure that:

a) The driving tester enters into CSTIMS all test results immediately after the completion of the test;

b) The test results entered into CSTIMS match the Class, Endorsements, and Restrictions of the vehicle in which the applicant has successfully completed the CDL Skills Test; and

c) The driving tester uploads the correct score forms into CSTIMS.

d) The driving tester obtains a copy of the completed affidavit reflecting successful completion of training on the recognition, prevention, and reporting of human trafficking from each initial applicant for a Class A CDL who has attended a commercial driving school certified for approval by the Private Occupational Schools Division in the Department of Higher Education, and that the driving tester uploads a copy of the completed affidavit into CSTIMS.

(16) The testing unit must administer CDL Skills Tests only on Department approved testing areas and routes.

(17) The testing unit must ensure all three portions of the CDL Skills Test are conducted during daylight.

(18) The testing unit must ensure the vehicle being used for testing does not have any labels or markings that indicate which components are to be inspected by an applicant during the vehicle inspection portion of the CDL Skills Test. Manufacturer labels and/or markings are permitted.

(19) The testing unit must enter into an agreement with the Department containing, at a minimum, provisions that:

a) allow the FMCSA, the Department, and their representatives to conduct random inspections and audits without prior notice;

b) allow the Department to conduct on-site inspections at least annually and as needed**;**

c) require all driving testers to meet the same training and qualifications as state examiners, to the extent necessary to conduct CDL Skills Tests in compliance with these rules and regulations;

d) at least annually, allow the Department at its discretion to take the tests administered by the testing unit as if the Department employee was an applicant, or test an applicant who was tested by the testing unit to compare pass-fail results; and

e) reserve to the Department the right to take prompt and appropriate action against any testing unit or driving tester when they fail~~s~~ to comply with Department or federal standards or any other provisions in the contract or the rules and regulations.

(20) A driving tester and a testing unit shall charge fees only in accordance with section 42-2-406, C.R.S. and this rule. A driving tester and a testing unit shall only charge for tests administered.

a) Except as otherwise provided in paragraph (b) of this subsection (20), the maximum total fee, including but not limited to any administrative fee, for administering a CDL Skills Test or retest to an applicant is two hundred seventy-five dollars ($275.00).

b) The maximum total fee, including but not limited to any administrative fee, for administering a CDL Skills Test or retest to an employee or volunteer of a nonprofit organization that provides specialized transportation services for the elderly and for persons with disabilities, to any individual employed by a school district, or to any individual employed by a board of cooperative services is one hundred twenty-five dollars ($125.00).

(21) The testing unit must make all CDL testing records available for inspection during normal business hours.

(22) The testing unit must hold the state harmless from liability resulting from the administration of the CDL program.

(23) The testing unit must make an annual application for renewal of the unit’s testing license and individual driving tester license(s) before the license expires on June 30th of each year.

(24) The Testing Unit must ensure that each driver to be tested has met all applicable requirements with regard to ELDT.

J. DRIVING TESTER REQUIREMENTS

(1) The driving tester must possess a valid USDOT medical card and a valid CDL with the appropriate class and endorsement(s) to operate the vehicle(s) in which the CDL Skills Test is administered.

(2) The driving tester must conduct the full CDL Skills Test in accordance with Department procedures and must use the Colorado CDL Skill Test Score Form.

(3) The driving tester must complete all CDL third party testing forms correctly.

(4) The driving tester must administer all portions of the CDL Skills Test in English.

(5) Interpreters are not allowed for any portion of the CDL Skills Test.

(6) The driving tester agrees to hold the State harmless from any liability arising from or in connection with a CDL Skills Test.

(7) The driving tester must only test if the driving tester has a valid tester license issued by the Department.

(8) The driving tester must test in the CDL class of vehicle or endorsement(s) group authorized by the Department.

(9) Prior to administering the CDL Skills Test, the driving tester must ensure that the driver has in his/her immediate possession, a valid USDOT medical card, and a valid CLP for operating the class and endorsement(s), and/or restriction(s) of the vehicle being used for testing.

a) The driving tester must ensure that the instruction permit has been held by the applicant for at least fourteen (14) days prior to taking the skills test.

b) The driving tester must also ensure the applicant has in his/her immediate possession a valid driver's license and must compare the photo on the license to the applicant to verify identity.

c) The driving tester must obtain a copy of the completed affidavit reflecting successful completion of training on the recognition, prevention, and reporting of human trafficking from each initial applicant for a Class A CDL who has attended a commercial driving school certified for approval by the Private Occupational Schools Division in the Department of Higher Education.

(10) The driving tester must administer the CDL Skills Test to applicants in a vehicle equal to or lower in class and/or endorsement(s), and/or restriction(s) than the applicant has on his or her CLP.

(11) The driving tester must administer the CDL Skills Test only on Department approved testing areas and routes.

(12) The driving tester must administer all three portions of the CDL Skills Test during daylight.

(13) The driving tester must ensure that the vehicle in which the CDL Skills Test will be administered is in proper working and mechanical order.

(14) The vehicle inspection, the basic vehicle control skills, and the on-road driving test must be administered by the same driving tester in sequential order with no more than a 15-minute break between each portion of the CDL Skills Test. CDL Skills Test must be scheduled to avoid a lunch break.

(15) The Department may issue a driving tester license to a driving tester candidate upon the successful completion of the following requirements:

a) A testing unit must submit an application requesting that the driving tester candidate be granted a driving tester license;

b) The driving tester candidate must be an employee of the testing unit submitting the application;

c) The driving tester candidate must successfully complete the 8 day new CDL third party tester's training course;

d) Within 30 days following the date the driving tester candidate completes the 8 day new CDL third party tester's training course, the driving tester candidate must:

1. Administer two (2) shadow skills tests while accompanied by a licensed driving tester who shall monitor the test and compare pass-fail results with those of the new driving tester candidate; and

2. Complete the application for the fingerprint/background check.

e) All licensing fees must be received by the Department.

(16) The driving tester must inform the applicant that he/she may be randomly selected for a retest as mandated by 49 CFR.

(17) The driving tester may administer CDL Skills Test as an employee of, and on behalf of, the licensed testing unit. The driving tester may administer tests for more than one unit. However the driving tester must be licensed under each unit to conduct testing on its behalf. The driving tester must keep all CDL records separate for each testing unit.

(18) If an applicant fails any portion(s) of the CDL Skills Test, he or she must return on a different day and perform all three (3) portions of the CDL Skills Test over again.

(19) In order to qualify for renewal, the driving tester must administer a minimum of ten (10) CDL Skills Tests with different applicants within the twelve-month period preceding the application for renewal from the Department.

(20) The driving tester must:

a) Enter into CSTIMS all test results immediately after the completion of the test;

b) Ensure that the test results entered into CSTIMS match the Class, Endorsements, and Restrictions of vehicle in which the applicant has successfully completed the CDL Skills Test; and

c) Upload the original correct score forms into CSTIMS.

d) Upload into CSTIMS the completed affidavit reflecting successful completion of training on the recognition, prevention, and reporting of human trafficking from each initial applicant for a Class A CDL who has attended a commercial driving school certified for approval by the Private Occupational Schools Division in the Department of Higher Education.

(21) Upon leaving a testing unit, the driving tester's license may be transferred to another testing unit within three (3) months. If the driving tester is not employed as a driving tester at a licensed testing unit within three (3) months, the tester will be required to attend a new tester training class in order to be licensed by the Department. All training and license fees will apply and are the responsibility of the tester.

(22) The driving tester cannot administer the CDL Skills Test to an applicant with whom he/she has conducted in- vehicle skills training.

(23) The driving tester must ensure that each driver to be tested has met all applicable requirements with regard to ELDT

K. COURSE AND ROUTE REQUIREMENTS

(1) A testing unit should have a paved area or a flat hard surface for the CDL vehicle inspection and for the entire basic control skills exercise area that contain:

a) Solid painted lines that are at least 4 inches in width and traffic cones marking the testing boundaries in accordance with Department standards.

(i) Traffic cones, used to mark the painted testing boundaries, must be a minimum of eighteen inches in height, and the same size traffic cones must be used for each exercise. Traffic cones must be replaced when they no longer retain their original shape and color.

b) Boundary lines and cones clearly visible in the basic control skill exercise testing area.

(i) The testing area boundaries must be cleared of snow, debris, and vehicles that would obstruct the applicant's view during the basic control skill exercise.

(2) The testing unit must request and receive approval from the Department for any change(s) to the approved road test route prior to administering a CDL road test.

L. RIGHTS

(1) The driving tester or testing unit may refuse to test an applicant. The driving tester or testing unit contact person must notify the CDL Compliance Unit if an applicant is refused a test and must refer that driver to the CDL Compliance Unit.

(2) Government driving testers who want to test outside of their governmental testing unit may make a written request to the CDL Compliance Unit, and must receive approval from the CDL Compliance Unit prior to administering CDL Skills Tests outside of their governmental testing unit.

M. RECORDING AND AUDITING REQUIREMENTS

(1) The testing unit must maintain all pass/fail records for three years. These must include the CDL Skills Testing records for each applicant tested, the dates of the testing, the applicant's identification information, a copy of the completed affidavit reflecting successful completion of training on the recognition, prevention, and reporting of human trafficking from each initial applicant for a Class A CDL who has attended a commercial driving school certified for approval by the Private Occupational Schools Division in the Department of Higher Education, the vehicle information and the name and state assigned driving tester number for the driving tester who administered the test, and documentation that each driver subject to ELDT requirements has met those requirements. If a testing unit is no longer licensed, the unit must return all testing records to the Department within 30 days.

a) After three years, testing units must destroy all pass/fail records (shred, burn).

(2) A testing unit must enter all (pass and fail) CDL Skills Test results into CSTIMS immediately after the test including the upload of the score form and, for each initial applicant for a Class A CDL who has attended a commercial driving school certified for approval by the Private Occupational Schools Division in the Department of Higher Education, a copy of the completed affidavit reflecting successful completion of training on the recognition, prevention, and reporting of human trafficking.

(3) During CDL compliance audits and/or inspections, driving testers must cooperate with the Department and/or FMCSA by allowing access to testing areas and routes, furnishing CDL Skills Testing records and results, and providing other items pertinent to the mandated audit and/or inspection. The driving tester must surrender testing records upon request. The driving tester may make copies and retain copies of such records.

(4) If the testing unit provided the vehicle for the CDL Skills Test, the testing unit will furnish the vehicle for an applicant driver selected for a retest. No fees, including any vehicle rental fees required for testing, will be collected for this mandatory evaluation. The Department is not liable during retests for any damage, injury, or expense incurred.

(5) If the applicant tested in his/her own vehicle, the applicant will supply the vehicle for any CDL Skills Retest.

N. BOND

(1) A testing unit that is not an agency of government, or a Colorado school district, must maintain a bond in the amount of $20,000.00 with the Department pursuant 49 CFR. A surety company authorized to do business within the State of Colorado must execute the bond.

a) The bond must be for the use and benefit of the Department in the event of a monetary loss suffered by the Department that falls within the limitations of the bond, attributable to the willful, intentional, or negligent conduct of the testing unit or its agent(s) or employee(s).

b) If the amount of the bond is decreased or terminated, or if there is a final judgment outstanding on the bond, the testing unit cannot test outside their unit.

c) The Department must be named on the bond as the beneficiary or the bond must be held in the name of the Department.

(2) A testing unit that is an agency of government, or any Colorado school district, that will administer CDL driving tests outside of their unit, must maintain a bond in the amount of $5,000.00 with the Department. A surety company authorized to do business within the State of Colorado must execute the bond.

a) The bond must be for the use and benefit of the Department in the event of a monetary loss within the limitations of the bond, attributable to the willful, intentional or negligent conduct of the testing unit or its agent(s) or employee(s).

b) If the amount of the bond is decreased or terminated, or if there is a final judgment outstanding on the bond, the testing unit cannot test outside their unit.

c) The Department must be named on the bond as the beneficiary or the bond must be held in the name of the Department.

O. REVOCATION, CANCELLATION, OR SUSPENSION OF TESTING UNITS AND TESTERS

(1) The license of a testing unit or driving tester may be suspended or revoked for willful or negligent actions that may include but are not limited to any of the following:

a) Misrepresentations on the application to be a testing unit or a driving tester;

b) Improper testing and/or certification of an applicant driver who has applied for a CDL;

c) Falsification of test documents or results;

d) Violations of CDL rules for testing units or driving testers;

e) Failure to employ a minimum of at least one licensed CDL driving tester;

f) Failure to comply or cooperate in a CDL Compliance audit and record review;

g) Violations of the contract terms and conditions;

h) For any other violation of this rule or applicable state statute or federal regulation.

(2) A testing unit or driving tester that is suspended must not perform any duties related to CDL third party testing.

(3) Summary Suspension: Where the Department has objective and reasonable grounds to believe and finds that a testing unit or driving tester has been guilty of a deliberate and willful violation or that the public health, safety, or welfare imperatively requires emergency action and incorporates the findings in its order, it may summarily suspend the license pending proceedings for suspension or revocation which will be promptly instituted and determined. Testing is not permitted while the license is suspended.

(4) Appeal Process: Any person aggrieved by the denial of issuance, denial of renewal, suspension, or revocation of a testing unit license or driving tester license is entitled to a hearing pursuant to section 42-2- 407(7), C.R.S. Except as otherwise provided in paragraph (3) of this subsection O, the request for hearing must be submitted in writing and appropriately labeled, such as “CDL Cease Testing Appeal,” to the Department of Revenue, Hearings Division, 1881 Pierce Street, Room 106, Lakewood, Colorado, 80214. Subsequent appeals may be had as provided by law.

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Office of the Attorney General

Tracking number: 2021-00538

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Motor Vehicles

on 10/28/2021

1 CCR 204-30

DRIVER'S LICENSE-DRIVER CONTROL

The above-referenced rules were submitted to this office on 11/09/2021 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.

November 15, 2021 11:57:11

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Motor Vehicles

CCR number

1 CCR 204-30

Rule title

1 CCR 204-30 DRIVER'S LICENSE-DRIVER CONTROL 1 - eff 12/15/2021

Effective date

12/15/2021

DEPARTMENT OF REVENUE

Division of Motor Vehicles

DRIVER'S LICENSE – DRIVER CONTROL

1 CCR 204-30

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

RULE 1 RULES FOR APPLICATION FOR A COLORADO ROAD AND COMMUNITY SAFETY ACT IDENTIFICATION DOCUMENTS 42-2-501 CRS

Purpose

The purpose of this rule is to set forth regulations for application and issuance of driver's licenses, minor driver's licenses, instruction permits and identification cards for individuals who cannot demonstrate lawful presence in the United States and for individuals who can demonstrate temporary lawful presence in the United States. These regulations establish the source documents that are acceptable to establish identity, date of birth, Colorado residency, and, as applicable, temporary lawful presence.

Statutory Authority

The statutory bases for this regulation are C.R.S. Title 24-4-103, 24-72.1-103, 42-1-204, and Title 42, Article 2, Parts 1, 2, 3, and 5.

Incorporation By Reference Of Federal Law

The Department incorporates by reference as part of Rule 1 of the Department of Revenue Regulations, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, section 384, 110 Stat. 3009 (Sept. 30, 1996), referred to in this Rule 1. Such Act is published by the Department of Homeland Security in full in the United States Statutes at Large, Volume 110, page 3009. Rule 1 does not include any later amendments or editions of such Act.

A copy of such Act is available for a reasonable charge from the Colorado Department of Revenue, 1881 Pierce Street, Lakewood, Colorado 80214. A copy of such Act is maintained by the Colorado Department of Revenue and may be inspected by contacting the Driver License Office Manager at the Colorado Department of Revenue, 1881 Pierce Street, Lakewood, Colorado 80214 during normal business hours. The incorporated material may also be examined at any state publications depository library. A copy, including a certified copy, of such Act is also available from the United States Citizenship and Immigration Services ("USCIS") Historical Reference Library at 111 Massachusetts Avenue NW, First Floor (MS2180), Washington, DC 20529-2180.

(100) Definitions

a) Applicant – Any natural person applying to the Department for a Colorado Identification Document who can demonstrate temporary lawful presence in the U.S., or who cannot demonstrate lawful presence in the U.S.

b) CO-RCSA – The Colorado Road and Community Safety Act, section 42-2-501 C.R.S.

c) Department – The Colorado Department of Revenue.

d) Document – An original document certified by the issuing agency, an amended original document certified by the issuing agency, or a true copy certified by the issuing agency, excluding miniature, wallet sized, or photocopies of documents.

e) Exceptions Processing – The procedure the Department has established for persons who are unable, for reasons beyond their control, to present all necessary documents and must rely on alternative documents to establish identity or date of birth.

f) Full Legal Name – The Applicant's first name, middle name(s), and last name or surname, without use of initials or nicknames.

g) Hearing – Hearing before a Department Administrative Hearing Officer.

h) Identification Card – Has the same meaning as defined in C.R.S. 42-2-303(1)(a).

i) Identification Document – Has the same meaning as defined in C.R.S. 42-2-503(1).

j) Identity –The verifiable characteristics that when taken together make a person unique and identifiable. Evidence of identity includes proof of name, date of birth, and physical characteristics, including a verifiable photograph.

k) Incomplete Application – An application for a CO-RCSA Identification Document that does not satisfy state requirements for the issuance of a CO-RCSA Identification Document.

l) Individual Taxpayer Identification Number (ITIN) – A tax processing number issued by the Internal Revenue Service (IRS) as shown on an ITIN card issued by the IRS, on a letter from the IRS, or on a certified state tax return.

m) Temporary Lawful Presence – The status of a person whose authority to lawfully remain in the United States is temporary and who qualifies for an Identification Document.

n) SAVE – The Department of Homeland Security Systematic Alien Verification for Entitlements (SAVE) system managed by the U.S. Citizenship and Immigration Services of the Department of Homeland Security.

o) SSA – The U.S. Social Security Administration.

p) SSN – The Social Security Number issued by SSA.

q) SSOLV – The Social Security Online Verification system managed by SSA.

(200) Qualifications for CO-RCSA Identification Documents

a) Pursuant to section 42-2-506, C.R.S., individuals claiming to be temporarily lawfully present in the United States who apply for an Identification Document, must:

1. Provide documents that demonstrate the Applicant's identity, date of birth, full legal name and temporary lawful presence, for example:

    i. An unexpired foreign passport bearing a photograph of the Applicant in conjunction with a U.S. visa and I-94 showing class and expiration date that is verified using SAVE;
    ii. A valid Employment Authorization Document (EAD, Form I-766) that is verified using SAVE; or
    iii. Refugee/Asylee I-94, Arrival-Departure Record that is verified using SAVE, along with a photo identification document.

2. In order to prove lawful presence the Applicant must provide valid documentary evidence, verified using SAVE that demonstrates the Applicant:

    i. Is an alien lawfully admitted for temporary residence in the United States;
    ii. Has conditional permanent resident status in the United States;
    iii. Has an approved application for asylum in the United States or has entered into the United States in refugee status;
    iv. Has a valid, unexpired non-immigrant visa or non-immigrant visa status for entry into the United States;
    v. Has a pending application for asylum in the United States;
    vi. Has a pending or approved application for temporary protected status in the United States;
    vii. Has approved deferred action; or
    viii. Provides evidence of a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

3. Present proof of current residency in Colorado.

b) Pursuant to section 42-2-505, C.R.S., Applicants who apply for an Identification Document, who cannot demonstrate lawful presence in the United States, must:

1. Demonstrate residency in either of the following two ways:

    i. Sign a DR 2212 CO-RCSA Affidavit that states that the Applicant is currently a resident of Colorado; present evidence of residence in Colorado as provided in Section 200(b)(2) below; and present a certified proof of Colorado income tax return filing (from the Department) for the immediately preceding year; or
    ii. Sign a DR 2212 CO-RCSA Affidavit that the Applicant has continuously been a resident in Colorado for the immediately preceding 24 months, and present evidence of such residence in Colorado by providing:

        A. In order to prove that the Applicant has continuously resided in Colorado for the immediately preceding 24 months, the Applicant must present three documents demonstrating: one for current residency (date on the document must not be older than 12 months from date of application), one for residency from one year prior (date on the document must be later than 12 months, but not later than 23 months prior to the date of application), and one for residency from two years prior (date on the document must be later than 23 months, but not later than 30 months prior to the date of application).

2. Evidence of residence in Colorado shall be demonstrated by presenting documents that include the Applicant's name and principal residence, which must include a street address, and the date of the document. Examples include, but are not limited to: utility bill, credit card statement, pay stub or earnings statement, rent receipt, telephone bill, or bank statement.

3. Provide the Applicant's SSN or provide documentation of the Applicant's ITIN as specified in Section 100(l).

    i. An SSN may be added to an Applicant's record only by appearing in person.
    ii. An Applicant's SSN shall be verified with the SSOLV.

4. Sign a DR 2212 CO-RCSA Affidavit affirming that the Applicant has applied to be lawfully present within the U.S., or will apply to be lawfully present as soon as the Applicant is eligible.

5. Provide documentation of the Applicant's identity and date of birth by presenting one of the following documents, translated into English, from the Applicant's country of origin:

    i. A passport;
    ii. A consular identification card; or
    iii. A military identification document.

6. The documents in Section 200(b)(5) must contain: the Applicant's full legal name; the Applicant's date of birth; the date the document was issued; the name of the country that issued the document; and a full facial photograph of the Applicant.

7. The documents listed in Section 200(b)(5) above will be accepted for 10 years after the expiration date listed on the document. Documents without an expiration date will be accepted for 10 years from their issuance date.

8. Applicants shall sign their name, under penalty of perjury, on all required affidavits and documents in the presence of a Department employee.

c) Applicants may use an interpreter during their application. The use of an interpreter will be arranged for by the Applicant and any costs associated with the use of an interpreter will be the responsibility of the Applicant.

d) Applicants may use an interpreter for the written test for a driver's license, minor's driver's license, or instruction permit.

    1. All interpreters for Applicants applying for a CO-RCSA driver's license, minor driver's license, or instruction permit must be at least 16 years old and show an unexpired driver's license or identification card from any state in the United States or any document provided in Section 200 (b)(5).

e) A Colorado street address must be displayed except as provided below:

    1. An alternative address may be displayed for individuals for whom a State law, regulation, or DMV procedure permits display of an alternative address.

    2. An alternative address may be displayed for individuals who satisfy any of the following:

        i. If the individual is enrolled in the Colorado Address Confidentiality Program, which allows victims of domestic violence, dating violence, sexual assault, stalking, or a severe form of trafficking, to keep, obtain and use alternative addresses; and provides that the address of such person must be kept confidential; or
        ii. If the individual is entitled to have their address suppressed under state or federal law or suppressed by a court order including an administrative order issued by a State or Federal court; or
        iii. If the individual is protected from disclosure of information pursuant to section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

    3. In areas where a number and street name has not been assigned for U.S. mail delivery, an address convention used by the U.S. Postal Service is acceptable.

(300) Process for Translation

a) All documents provided to the Department by the Applicant shall be in English or have been translated into English.

b) The original and corresponding translated documents shall be presented together at the time of application.

c) All translated documents must have the following included at the end (must be typed or electronically printed on the same page as the translation, not on separate pieces of paper or the translation will not be accepted by the Department):

    1. An attestation that states: “I, [insert translator’s full name], affirm that the foregoing is a complete and accurate translation from [insert foreign language] to the English language to the best of my ability. I further affirm that I am fully competent to translate from [insert foreign language] to the English language and that I am proficient in both languages;” and

    2. The number and state of issuance of the translator’s unexpired driver’s license, instruction permit, or identification card.

d) All translated documents and information required by Section 300(c) shall be included in the Applicant’s permanent motor vehicle record.

e) Applicants are responsible for all costs of translation.

(400) Fee Structure

a) For those who cannot demonstrate lawful presence, the fee for a CO-RCSA driver’s license or a minor driver’s license is $33.00, which includes an additional fee to cover direct and indirect costs. The cost for a CO-RCSA instruction permit is $21.00, which includes an additional fee to cover direct and indirect costs. The cost for a CO-RCSA identification card is $13.00, which includes an additional fee to cover direct and indirect costs.

b) As of July 1, 2020, the following fee increases were effective for those that can demonstrate temporary lawful presence:

    1. For those who can demonstrate temporary lawful presence, the cost for a CO-RCSA driver’s license or minor driver’s license under section 42-2-506, C.R.S. is $30.87.

    2. For those who can demonstrate temporary lawful presence, the cost for a CO-RCSA instruction permit is $18.52. The cost for a CO-RCSA identification card is $12.67.

(500) Qualifications for Renewal

a) CO-RCSA Identification Documents will expire three years after the date of issuance except as provided below:

    1. A driver’s license issued to an Applicant under 21 will expire three years after the date of issuance or 20 days after the 21st birthday of the Applicant (whichever comes first).

    2. An identification card or instruction permit issued to an Applicant under 21 will expire three years after the date of issuance or on the 21st birthday of the Applicant (whichever comes first).

b) Applicants may apply in person, by mail, or electronically in accordance with C.R.S. 42-2-118 or 42-2-304 to renew a CO-RCSA Identification Documents.

1. Applicants under the age of 21 can renew Identification Documents electronically.

2. Renewals by mail and electronic renewals will not be processed with an out of state mailing address.

c) An Applicant seeking to renew an Identification Document is required to present the same identity documentation as required under Section 200 of this rule, except that the Applicant may present a Colorado Identification Document expired less than one year instead of the identity documentation required by Section 200(b)(5).

d) An Applicant who cannot demonstrate lawful presence seeking to renew an Identification Document is not required to present proof of ITIN or SSN if proof was provided at time of issuance of a previous Identification Document.

(600) Qualifications for Issuance of a Duplicate Credential

a) Applicants may apply for a duplicate of an existing CO-RCSA Instruction Permit or Driver's License as provided below:

1. Applicants must appear in person and certify, under penalty of perjury, that the previous credential was lost, stolen, or destroyed by completing the "Request for Duplicate Instruction Permit/Driver License" (DR2989) form provided by the Department.

2. Eligible Applicants may submit an electronic application, on which the Applicant must certify, under penalty of perjury, that the previous credential was lost, stolen, or destroyed.

3. Applicants must present proof documents as required in Section 200 above except that proof of ITIN is not required if proof of ITIN was provided for issuance of a previous Identification Document.

4. A duplicate will not be issued to an Applicant with a lawful presence status that has changed since issuance of the previous credential. A change of lawful presence status requires renewal.

(700) Electronic Applications

a) The Department may accept electronic applications for services provided electronically.

b) The Department may accept an application electronically, if the Applicant's fingerprint was captured as part of a previous application.

c) The Department may accept an application electronically, if a signature was captured as part of a previous application and if the Applicant verifies the information on the application.

(800) Process for Complete Application

a) When an Applicant has completed the required application and established the standards set forth in this rule, the Applicant will be required to review and verify the information on the application by signing a "signature capture device," a fingerprint will be captured, and a photograph of the Applicant will be taken. A temporary CO-RCSA Identification Document will be issued. The permanent CO-RCSA Identification Document will be mailed to the Applicant at the address provided on the Applicant's application.

(900) Process for Incomplete Application

a) If an application is incomplete or the Applicant has failed to provide documents verifiable by the Department for identity, date of birth, residency, or lawful presence, the Department shall provide a Notice of Incomplete Application unless the Department provides a Notice of Denial per Section 1000 below.

b) The Notice of Incomplete Application shall include a notation of the information that is incomplete, or of the documentation that is unverifiable. If the authenticity of a document cannot be verified, then an application may be considered incomplete and additional documentation may be required, or the Applicant may be referred to Exceptions Processing. An Applicant may return to the Department with the required additional documentation prior to being denied an Identification Document.

(1000) Denial of Application

a) If an application is incomplete or the Applicant has failed to provide documents verifiable by the Department for identity, date of birth, residency, or lawful presence, the Department shall provide a Notice of Denial.

b) Nothing in this regulation shall be construed to prevent the Department from denying an application on the basis that an Applicant has presented documents that are fraudulent or that are not verifiable.

c) Nothing in this regulation restricts or prohibits the Department from verifying any document presented by an Applicant.

d) An application shall be denied if the Applicant presents fraudulent or altered documents or commits any other fraud in the application process.

(1100) Hearing and Final Agency Action

a) An Applicant who has received a Notice of Denial may, within 60 days of the date of the Notice of Denial, request a hearing on the denial by filing a written request for hearing with the Hearings Section of the Department at 1881 Pierce St. Entrance B, #112, Lakewood, CO 80214.

b) Hearings shall be held in accordance with the provisions of the State Administrative Procedure Act, and the provisions of Title 42 of the Colorado Revised Statutes.

c) The only issue at a hearing shall be whether the Applicant has satisfied federal and state requirements for the issuance of an Identification Document.

d) The hearing officer shall issue a written decision. If the hearing officer finds that the Applicant has not satisfied federal and state requirements for the issuance of an Identification Document, then the denial shall be sustained. If the hearing officer finds that the Applicant has satisfied requirements for the issuance of an Identification Document, then the denial shall be rescinded and the Department shall issue an Identification Document.

e) The decision by the hearing officer shall constitute final agency action, and is subject to judicial review as provided by section 24-4-10

PHILIP J. WEISER
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NATALIE HANLON LEH
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Office of the Attorney General

Tracking number: 2021-00504

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Motor Vehicles

on 10/28/2021

1 CCR 204-30

DRIVER'S LICENSE-DRIVER CONTROL

The above-referenced rules were submitted to this office on 11/09/2021 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.

November 15, 2021 11:58:40

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Board of Nursing

CCR number

3 CCR 716-1

Rule title

3 CCR 716-1 NURSING RULES AND REGULATIONS 1 - eff 12/15/2021

Effective date

12/15/2021

DEPARTMENT OF REGULATORY AGENCIES

Division of Professions and Occupations - Board of Nursing

NURSING RULES AND REGULATIONS

3 CCR 716-1

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

1.1 RULES AND REGULATIONS FOR THE LICENSURE OF PRACTICAL AND PROFESSIONAL NURSES

…

F. LICENSURE BY ENDORSEMENT

1. …

   a. The applicant has substantially equivalent experience or credentials that are required by Article 255 of Title 12, C.R.S.; and

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

2. The Board may deny such license if:

   …

   b. …

      …

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

      …

G. REINSTATEMENT AND REACTIVATION

…

8. An individual whose professional or practical nursing license has been expired or inactive…

   a. …

      …

      (3) Nursing knowledge and skills update, based on best evidence;

      (4) Legal, ethical, and professional issues;

(5) Manage patient conditions effectively in order to minimize sentinel events;

(6) Rapid response to critical incidents;

(7) Prioritize cares when caring for multiple patients; and

(8) Critical reasoning for clinical decision making.

b. …

5-10 years	Contact Hours:	120 Theory (including lab) and 120 Clinical (one-hundred percent may be conducted in a simulation environment)
more than 10 years	Contact Hours:	120 Theory (including lab) and 120 Clinical (seventy-five percent may be conducted in a simulation environment); and possible additional hours as determined by the Board on a case-by-case basis.

…

Adopted: October 21, 2009
Revised: April 26, 2012
Effective: July 1, 2012
Revised: October 24, 2012
Effective: December 15, 2012
Revised: January 22, 2013
Effective: March 18, 2013
Revised: January 23, 2019
Effective: March 17, 2019
Revised: October 27, 2021
Effective: December 30, 2021

1.2 RULES AND REGULATIONS FOR APPROVAL OF NURSING EDUCATION PROGRAMS

…

F. ESTABLISHING A NURSING EDUCATION PROGRAM (PHASES I THROUGH III)

…

2. **Phase I of the Approval Process:** …

…

b. The documentation of intent to establish a program shall include the following information:

…

(10) …

(11) …

(12) …

(13) …

c. The Governing Body shall submit to the Board the results of a current feasibility study that includes objective data regarding the following:

…

(4) Availability of relevant clinical opportunities. The Nursing Education Program must submit a signed commitment from the individual who does clinical placement at each clinical entity, which includes the type(s) of learning opportunities, average daily census, maximum number of nursing students that can be accommodated, appropriate location of the clinical entity in relationship to the school, and any limitations or restrictions imposed by the clinical entity.

d. The Governing Body of the Nursing Education Program must apply on a Board-approved application form.

e. …

f. …

g. …

3. **Phase II of the Approval Process:** …

…

c. The Nursing Education Program must apply on a Board-approved application form.

d. …

e. …

f. …

4. **Phase III of the Approval Process** …

a. The Nursing Education Program with Interim Approval shall submit semiannual reports to the Board regarding the progress and problems of program implementation, evidence of adequate clinical placements, adequate qualified faculty to meet the curriculum, and initial implementation of a systematic evaluation plan.

…

h. The Nursing Education Program must submit the request for Full Approval on a Board-approved application form.

i. …

i. …

k. …

l. …

G. FULL APPROVAL OF A NURSING EDUCATION PROGRAM (PHASE IV)

…

3. Within ninety days of the Site Visit, a written report of the Site Visit shall be submitted to the Nursing Education Program for comment. Such comments shall be submitted by the Nursing Education Program within ninety days of the date of the report and on a Board approved form. The Site Visit report and comments will be presented to the Board at the next regularly-scheduled Full Board meeting for which the comments were timely submitted in advance of the external agenda deadline.

…

H. WITHDRAWAL OF FULL APPROVAL OF A NURSING EDUCATION PROGRAM

1. …

…

…

Adopted: January 27, 2010
Effective: March 31, 2010
Revised: January 22, 2013
Effective: March 18, 2013
Revised: April 22, 2014
Effective: June 14, 2014
Revised: April 26, 2016
Effective: June 30, 2016
Revised: January 31, 2018
Adopted April 18, 2018
Revised: October 27, 2021
Effective: December 30, 2021

…

1.5 RULES AND REGULATIONS FOR LICENSURE OF PSYCHIATRIC TECHNICIANS

A. STATEMENT OF BASIS AND PURPOSE

The Rules in Rule 1.5 are adopted pursuant to authority granted the State Board of Nursing pursuant to sections 12-20-202(3), 12-20-204(1), and 12-255-107(1)(k), C.R.S., in order to specify procedures used in obtaining and maintaining psychiatric technician licensure.

…

Adopted: January 9, 1997
Adopted: January 9, 1997
Revised: October 24, 2012
Effective: December 15, 2012
Revised: January 22, 2013
Effective: March 18, 2013
Revised: July 26, 2017
Revised: October 27, 2021
Effective: December 30, 2021

…

1.10 RULES AND REGULATIONS FOR CERTIFICATION AS A NURSE AIDE

…

E. CERTIFICATION BY ENDORSEMENT

1. …

a. The applicant has substantially equivalent experience or credentials that are required by Article 255 of Title 12, C.R.S.; and

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

c. …

d. …

(1) …

…

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

…

Adopted January 21, 2009
Effective March 30, 2009
Revised: October 24, 2012
Effective: December 15, 2012
Revised: January 22, 2013
Effective: March 18, 2013
Revised: July 21, 2015
Effective: September 14, 2014
Revised: October 27, 2021

Effective: December 30, 2021

…

1.13 RULES AND REGULATIONS REGARDING THE DELEGATION OF NURSING TASKS

…

H. EXCLUSIONS FROM THE RULE 1.13

…

7. School personnel that volunteer to administer or assist in the administration of medical marijuana in non-smokeable form to any student with a valid recommendation for medical marijuana pursuant to section 22-1-119.3, C.R.S.

…

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

1.14 RULES AND REGULATIONS TO REGISTER PROFESSIONAL NURSES QUALIFIED TO ENGAGE IN ADVANCED PRACTICE REGISTERED NURSING

…

D. REQUIREMENTS FOR INCLUSION ON THE ADVANCED PRACTICE REGISTRY

…

5. Registration by Endorsement

a. …

(1) …

(a) The professional nurse has substantially equivalent experience or credentials that are required by Article 255 of Title 12 C.R.S.; and

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

(2) …

…

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

…

Adopted: April 28, 2010 5
Effective: July 1, 2010

Revised: July 26, 2017
Effective: September 14, 2017
Revised: October 27, 2021
Effective: December 30, 2021

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

…

B. PURPOSE: Section 12-255-112(4), C.R.S. sets forth the legal requirements for an Advanced Practice Registered Nurse (APRN) to obtain prescriptive authority in Colorado. First, the APRN must obtain Provisional Prescriptive Authority. Generally, those requirements are:

…

5. Complete a 750 hour Mentorship with a Physician or an Advanced Practice Registered Nurse with Full Prescriptive Authority and experience in prescribing medications. The Physician or APRN shall have education, training, experience and a practice that corresponds with but need not be identical to the Role and, if applicable, Population Focus of the RXN-P.

…

F. REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY

…

2. Requirements for Original Full Prescriptive Authority.

…

b. …

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

…

G. MENTORSHIP REQUIREMENTS

1. To obtain Full Prescriptive Authority, the RXN-P must complete 750 hours of documented experience in a Mentorship. The Mentorship shall be conducted with either a Physician Mentor or RXN Mentor [hereinafter referred to as Mentor(s)] as defined in Sections (C)(11) and (C)(12) of Rule 1.15, respectively. The Mentorship must be completed within three years after Provisional Prescriptive Authority is granted.

a. For the nurse practitioner (NP) role, the mentorship hours must cover each of the competencies for the APRN's Population Focus as defined by the National Organization of Nurse Practitioner Faculties' Population-Focused Nurse Practitioner Competencies, which the Board incorporates by reference. The standards and regulations incorporated by reference may be examined at the

State Board of Nursing, 1560 Broadway, Suite 1350, Denver, Colorado 80202, during normal business hours, Monday through Friday, except when such days are state holidays. Certified copies of the incorporated standards shall be provided at cost upon request. The Program Director or the Program Director's designee will provide information regarding how the incorporated standards and regulations may be examined at any state public depository library. The standards and regulations are also available from the agency, organization or association originally issuing the code, standard, guideline or rules as follows: for Adult-Gerontology Nurse Practitioners: https://www.aacn.org/~/media/aacn-website/certification/advanced-practice/adultgeroacnpcompetencies.pdf?la=en (effective 2016), and for all other population foci: https://www.aacnnursing.org/Portals/42/AcademicNursing/pdf/Population-Focused-NP-Competencies-2013.pdf (effective 2013). This rule does not include any later amendments or editions of the code, standard, guideline, or rules.

b. For the certified nurse midwife (CNM), certified registered nurse anesthetist (CRNA), and/or clinical nurse specialist (CNS) roles, the mentorship hours must cover the range of practice for the specific role.

c. …

…

Approved: January 27, 2010
Effective: July 1, 2010
Revised: July 25, 2012
Effective: September 14, 2012
Revised: September 18, 2015
Effective: November 14, 2015
Revised: July 26, 2017
Effective: September 14, 2017
Revised: October 27, 2021

Effective: December 30, 2021

1.16 DUTY TO REPORT REQUIREMENTS

…

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

…

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

Effective: December 30, 2021

…

1.31 RULES REGARDING THE USE OF BENZODIAZEPINES

The basis for the Board's promulgation of these rules and regulations by the State Board of Nursing is set forth in sections 12-20-204(1), 12-255-107(1)(j), 12-255-107, and 12-30-109(6), C.R.S.

The purpose for the Board's promulgation of these rules and regulations is to implement rules required by section 12-30-109(6), C.R.S., related to requirements for prescribing benzodiazepines to patients for whom licensees have not previously prescribed benzodiazepines within the last twelve months.

A. Licensees must limit any prescription for a continuous benzodiazepine to a 30-day supply, for any patient to whom the licensee has not prescribed a benzodiazepine in the last 12 months.

B. Prior to prescribing the second fill of a benzodiazepine, a licensee must comply with the requirements of section 12-280-404(4), C.R.S. Failure to comply with section 12-280-404(4), C.R.S., constitutes unprofessional conduct or grounds for discipline under section 12-255-120, C.R.S.

C. The limitation stated in section (A) of this Rule does not apply to patients for whom licensees prescribe benzodiazepines for the following conditions:

   1. Epilepsy;

   2. A seizure, a seizure disorder, or a suspected seizure disorder;

   3. Spasticity;

   4. Alcohol withdrawal; or

   5. A neurological condition, including a post-traumatic brain injury or catatonia.

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

Adopted: October 27, 2021
Effective: November 1, 2021

PHILIP J. WEISER
Attorney General

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Chief Deputy Attorney General

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Office of the Attorney General

Tracking number: 2021-00587

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Board of Nursing

on 10/27/2021

3 CCR 716-1

NURSING RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 10/27/2021 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.

November 15, 2021 11:27:55

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - State Plumbing Board

CCR number

3 CCR 720-1

Rule title

3 CCR 720-1 PLUMBING RULES AND REGULATIONS 1 - eff 12/15/2021

Effective date

12/15/2021

DEPARTMENT OF REGULATORY AGENCIES

State Plumbing Board

PLUMBING RULES AND REGULATIONS

3 CCR 720-1

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

…

1.4 APPLICATIONS AND LICENSING

…

L. Notice of Change of Address

…

2. The Board requires one of the following forms of documentation to change the name or correct the social security number or individual taxpayer identification number of a licensee or registrant:

…

c. Court order;

d. Documentation from the Internal Revenue Service verifying the licensee's valid individual taxpayer identification number; or

e. A driver's license or social security card with a second form of identification may be acceptable at the discretion of the Division of Professions and Occupations.

…

Editor's Notes

History

Entire rule eff. 01/01/2008.

Entire rule eff. 04/01/2010.

Rules 2.3.A, 2.4.1-2.4.2, 6.4 eff. 09/01/2011.

Entire rule eff. 03/15/2014.

Rules 2.3, 3.1 eff. 12/15/2014.

Entire rule eff. 02/14/2016.

Rules 2.5.1.27, 4.1, 4.2, 4.5.4, 4.5.5, 4.6-4.13, 6.1, 7.4 eff. 04/01/2016.

Rules 1.2 A-C, 1.2 D.4, 1.2 D.7-10, 1.2 E, 1.3, 1.4 A, 1.4 E, 1.6 B.8 eff. 06/14/2020. Rule 1.4.D repealed eff. 06/14/2020.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
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Office of the Attorney General

Tracking number: 2021-00588

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - State Plumbing Board

on 10/27/2021

3 CCR 720-1

PLUMBING RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 10/27/2021 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.

October 29, 2021 14:46:40

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Board of Unlicensed Psychotherapists

CCR number

4 CCR 734-1

Rule title

4 CCR 734-1 UNLICENSED PSYCHOTHERAPISTS RULES AND REGULATIONS 1 - eff 12/15/2021

Effective date

12/15/2021

DEPARTMENT OF REGULATORY AGENCIES

Board of Unlicensed Psychotherapists

UNLICENSED PSYCHOTHERAPISTS RULES AND REGULATIONS

4 CCR 734-1

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

…

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

…

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

…

Editor's Notes

History

Entire rule emer. rule eff. 12/16/2011.

Entire rule eff. 02/15/2012.

Authority, Purpose and Scope, rules 1.1 A, 1.1 E, 1.4 B.1, 1.6, 1.7 B.3, 1.8 - 1.10, 1.12, 1.14 emer. rules eff. 10/16/2020.

Authority, Purpose and Scope, rules 1.1 A, 1.1 E, 1.4 B.1, 1.6, 1.7 B.3, 1.8 - 1.10, 1.12 - 1.16, Appendix A eff. 12/15/2020.

Rules 1.6 A, 1.16, Appendix A eff. 06/14/2021.

Annotations

Rule 1.16 E.4. (adopted 10/16/2020) was not extended by Senate Bill 21-152 and therefore expired 05/15/2021.

PHILIP J. WEISER
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Office of the Attorney General

Tracking number: 2021-00585

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Board of Unlicensed Psychotherapists

on 10/15/2021

4 CCR 734-1

UNLICENSED PSYCHOTHERAPISTS RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 10/15/2021 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.

November 02, 2021 15:04:07

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

CCR number

5 CCR 1001-2

Rule title

5 CCR 1001-2 COMMON PROVISIONS REGULATION 1 - eff 12/15/2021

Effective date

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

COMMON PROVISIONS REGULATION

5 CCR 1001-2

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

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I. Definitions, Statement of Intent, and General Provisions Applicable to All Emission Control Regulations Adopted by the Colorado Air Quality Control Commission

I.A. Applicability

Emission control regulations adopted by the Air Quality Control Commission apply throughout Colorado unless otherwise stipulated. The Statement of Intent, Definitions, and General Provisions of this regulation apply to all emission control regulations adopted by the Commission unless otherwise stipulated.

Pursuant to Colorado Revised Statutes § 24-4-103(12.5), copies of materials incorporated by reference are available for public inspection during regular business hours, or copies may be obtained at a reasonable cost from the Technical Secretary of the Air Quality Control Commission (the Commission), located at 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530. Materials incorporated by reference may also be available through the United States Government Printing Office, online at www.govinfo.gov. Materials incorporated by reference are those editions in existence as of the date of this regulation as promulgated or revised by the Commission and references do not include later amendments to or editions of the incorporated materials.

I.B. Authority

Colorado Revised Statutes § 25-7-109 provides: As promptly as possible, the Commission shall adopt and promulgate, and from time to time modify or repeal emission control regulations which require the use of effective practical air pollution controls. Colorado Revised Statutes §§ 25-7-105 through 25-7-110, § 25-7-114 and § 25-7-117 are the general statutory authority for adoption by the Commission of standards, regulations, and programs.

I.C. Colorado Air Pollution Prevention and Control Act: Colorado Revised Statutes § 25-7-102 (Legislative Declaration)

In order to foster the health, welfare, convenience, and comfort of the inhabitants of the state of Colorado and to facilitate the enjoyment and use of the scenic and natural resources of the state, it is declared to be the policy of this state to achieve the maximum practical degree of air purity in every portion of the state, to attain and maintain the National Ambient Air Quality Standards, and to prevent the significant deterioration of air quality in those portions of the state where the air quality is better than the National Ambient Air Quality Standards.

To that end, it is the purpose of this article to require the use of all available practical methods that are technologically feasible and economically reasonable so as to reduce, prevent, and control air pollution throughout the state of Colorado; to require the development of an air quality control program in which the benefits of the air pollution control measures utilized bear a reasonable relationship to the economic, environmental, and energy impacts and other costs of such measures; and to maintain a cooperative program between the state and local units of government. It is further declared that the prevention, abatement, and control of air pollution in each portion of the state are matters of statewide concern and are affected with a public interest and that the provisions of this article are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

The General Assembly further recognizes that a current and accurate inventory of actual emissions of air pollutants from all sources is essential for the proper identification and designation of attainment and nonattainment areas, the determination of the most cost effective regulatory strategy to reduce pollution, the targeting of regulatory efforts to achieve the greatest health and environmental benefits, and the achievement of a federally approved clean air program. In order to achieve the most accurate inventory of air pollution sources possible, this article specifically provides incentives to achieve the most accurate and complete inventory possible, and to provide for the most accurate enforcement program achievable based upon that inventory.

I.D. Intent

To implement the legislative declaration and other sections of the Act, the Commission declares that it is the intent and purpose of these regulations is to:

I.D.1. Achieve and maintain levels of air quality that will protect human health and safety, prevent injury to plant and animal life, prevent damage to property, prevent unreasonable interference with the public welfare, preserve visibility, and protect scenic, aesthetic and historic values of Colorado;

I.D.2. Require the use of all available practicable methods to reduce, prevent, and control air pollution for the protection of the health, safety, and general welfare of the people of the state of Colorado. In order to achieve air purity consistent with this intent, it may be necessary, ultimately to control air pollutant emissions to such a degree of opacity so that the emissions are no longer visible;

I.D.3. Prevent significant degradation of Colorado's air resource;

I.D.4. Prevent odors and other air pollution problems which interfere with the comfortable enjoyment of life; and

I.D.5. Apply the major resources of the Colorado air pollution control programs toward solving priority air pollution problems.

I.E. Growth

The Commission recognizes that the growth in the amount and complexity of air pollution in Colorado is brought about by, and incident to, population growth, mobility, increased affluence, industrial development and changing social values in said state.

The Commission believes that the air pollution problem is likely to be aggravated and compounded by additional population growth, mobility, affluence, industrial development, and changing social values in the future, that are likely to result in serious potential danger to the public and the environment. Therefore, the Commission intends to pursue solutions, in conjunction with other appropriate agencies and interests that have a direct interest and capability in solving a growing air pollution problem(s) in relation to the broader environmental degradation problem. It is the intent of the Commission to coordinate with industrial, commercial, agricultural, and transportation planning organizations, land use, and other environmental organizations, the public, the legislature, educational organizations, and other major interests in such a manner as to prevent air pollution in Colorado.

I.F. Abbreviations

Abbreviations used in the Commission's regulations have the following meaning:

ASTM	American Society For Testing And Materials
APEN	Air Pollutant Emission Notice
AQCR	Air Quality Control Region
AQRV	Air Quality Related Value
BACT	Best Available Control Technology
BART	Best Available Retrofit Technology
BTU	British Thermal Unit
°C	Degree Celsius (Centigrade)
cal	Calorie
CAS	Chemical Abstract Service
CCR	Code Of Colorado Regulations
CdS	Cadmium Sulfide
Cfm	Cubic Feet Per Minute
CFR	Code Of Federal Regulations
CO	Carbon Monoxide
CO2	Carbon Dioxide
CO2e	Carbon Dioxide Equivalent
CEM	Continuous Emission Monitoring

COM	Continuous Opacity Monitoring
C.R.S.	Colorado Revised Statutes
dscm	Dry Cubic Meter(s) At Standard Conditions
dscf	Dry Cubic Feet At Standard Conditions
U.S. EPA	United States Environmental Protection Agency
ERC	Emission Reduction Credit
eq	Equivalence
°F	Degree Fahrenheit
FLM	Federal Land Manager
Fed. Reg.	Federal Register
FS	Forest Service
ft	Feet
g	Gram(s)
GACT	Generally Available Control Technology
gal	Gallon(s)
GHG	Greenhouse Gas
g eq	Gram Equivalent
GEP	Good Engineering Practice
gr	Grain(s)
hr	Hour(s)
HAP(s)	Hazardous Air Pollutant(s)
HC	Hydrocarbons
HCl	Hydrochloric Acid
Hg	Mercury
H2O	Water
H2S	Hydrogen Sulfide
H2SO4	Sulfuric Acid
hz	Hertz

in	Inch(s)
J	Joule
°K	Degree Kelvin
kg	Kilogram(s)
LAER	Lowest Achievable Emission Rate
l	Liter(s)
lpm	Liter(s) Per Minute
lb	Pound(s)
LTS	Long Term Strategy For Visibility Protection
m	Meter(s)
MACT	Maximum Achievable Control Technology
m eq	Milli Equivalent(s)
min	Minute(s)
mg	Milligram(s)
ml	Milliliter(s)
mm	Millimeter(s)
mol	Mole
mol. wt.	Molecular Weight
mV	Millivolt
N	Newton
NA(s)	Nonattainment Area(s)
NAAQS	National Ambient Air Quality Standards
NESHAP	National Emission Standards For Hazardous Air Pollutants
N2	Nitrogen
Ng	Nanogram (10^{-9} Grams)
NPS	National Park Service
NO	Nitric Oxide
NO2	Nitrogen Dioxide

NOx	Nitrogen Oxides
NRVOC(s)	Negligibly Reactive Volatile Organic Compound(s)
NSPS	New Source Performance Standards
NSR	New Source Review
O	Ohm
O2	Oxygen
Pa	Pascal
PM	Particulate Matter
PM10	Particulate Matter With Diameter Of 10 Microns Or Less
PM2.5	Particulate Matter With Diameter Of 2.5 Microns Or Less
ppb	Parts Per Billion
ppm	Parts Per Million
PSD	Prevention Of Significant Deterioration
psia	Pounds Per Square Inch Absolute
psig	Pounds Per Square Inch Gauge
PTE	Potential To Emit
RACT	Reasonably Available Control Technology
°R	Degree Rankine
RFP	Reasonable Further Progress
Sec	Second
SIP	State Implementation Plan
SO2	Sulfur Dioxide
SO3	Sulfur Trioxide
SOx	Sulfur Oxides
STP	Standard Temperature And Pressure
TPY	Tons Per Year
TSP	Total Suspended Particulates
Mg	Microgram(s) (10^{-6} Gram)

USC	United States Code
VAC	Volts Alternating Current
VDC	Volts Direct Current
V	Volt
VOC	Volatile Organic Compound
W	Watt

I.G. Definitions

The following words and phrases shall have the following meanings unless the context in which they are used requires specific meaning within separate Commission regulations. In those instances, words and phrases shall be defined in the appropriate regulation.

ABSOLUTE VAPOR PRESSURE The pressure relative to an absolute vacuum that a confined vapor exerts at a given temperature when in equilibrium with its solid or liquid state.

ACT The "Colorado Air Pollution and Prevention Control Act". Colorado Revised Statutes Title 25, Article 7.

AIR POLLUTANT Any fume, smoke, particulate matter, vapor, gas, or any combination thereof that is emitted into or otherwise enters the atmosphere, including, but not limited to, any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product materials) substance or matter, but not including water vapor or steam condensate or any other emission exempted by the Commission consistent with the Federal Act. Such term includes any precursors to the formation of any air pollutant, to the extent the administrator of the U.S. EPA or the Commission has identified such precursor(s) for the particular purpose for which the term "air pollutant" is used.

AIR POLLUTION Any concentration of one or more air pollutants in the ambient air that has caused, is causing, or if unabated, may cause injury to human, plant, or animal life, or injury to property, or which unreasonably interferes with the comfortable enjoyment of life or property or with the conduct of business.

AIR POLLUTION CONTROL AUTHORITY The Division or any person or agency given authority by the Division or a local government unit duly authorized with respect to air pollution control.

ALTERNATIVE METHOD Any method of sampling and analysis for an air pollutant that is not a reference or equivalent method, but has been approved by the Division.

AMBIENT AIR That portion of the atmosphere, external to the source, to which the general public has access.

AREA CLASSIFICATION The Commission and the U.S. EPA have designated the entire state into attainment, nonattainment or unclassifiable areas.

ASPHALT CONCRETE PLANT Any facility used to manufacture asphalt concrete by heating and drying aggregate and mixing with asphalt compounds.

ASPHALT PAVING MATERIAL A petroleum based asphaltic compound used in the preparation of asphalt concrete for application to roads, highways, and streets.

ATMOSPHERE The surrounding or outside air i.e. external to buildings. Emissions of air pollutants from a building or structure not specifically designed to control pollutant emissions from sources within such building or structure shall constitute an emission into the ambient air or atmosphere.

ATTAINMENT AREA Any area within Colorado designated by the Commission and approved by the U.S. EPA in which the ambient air concentrations of any designated pollutants are less than that specified in the National Ambient Air Quality Standards.

BULK PLANT A petroleum distillate storage and distribution facility that has an average daily throughput of 76,000 liters (20,000 gallons) or less which is loaded directly into delivery vehicles. (As used herein, "bulk plant" does not include service stations or a separate operation within a petroleum distribution facility that pumps only into fuel tanks fueling motor vehicles and trucks.)

CAPACITY FACTOR The ratio of average load to the capacity rating of the machine or equipment for the specified period of time.

CAPTURE SYSTEM The equipment, including hoods, ducts, fans, dampers, etc., used to capture or transport air pollutants.

CARBON DIOXIDE EQUIVALENT A metric used to compare the emissions from various GHGs based upon their global warming potential (GWP). CO2e is determined by multiplying the mass amount of emissions (tons per year), for each GHG constituent by that gas's GWP, and summing the resultant values to determine CO2e (tons per year). The applicable GWPs codified in 40 CFR Part 98, Subpart A, Table A-1 – Global Warming Potentials are hereby incorporated by reference as in effect as of November 19, 2013, but not including later amendments.

CLAUS SULFUR RECOVERY PLANT A process unit that recovers sulfur from hydrogen sulfide by a vapor-phase catalytic reaction involving sulfur dioxide and hydrogen sulfide.

COAL All solid fossil fuels classified as anthracite, bituminous, sub-bituminous, or lignite by the appropriate American Society for Testing and Materials method.

COAL PREPARATION PLANT Any facility (excluding underground mining operations), which prepares coal by one or more of the following processes: breaking, wet or dry cleaning, crushing, screening, and thermal drying.

COAL PROCESSING AND CONVEYING EQUIPMENT Any machinery used to reduce the size of coal or to separate coal from refuse; the equipment used to convey coal or to remove coal from refuse; the equipment used to convey coal or to remove coal and refuse from the machinery including, but not limited to, breakers, crushers, screens, and conveyor belts.

COAL REFUSE Waste products of coal mining, cleaning, and preparation.

COAL STORAGE SYSTEM Any facility used to store coal except for open storage areas.

COMMISSION The Air Quality Control Commission created by Colorado Revised Statutes § 25-7-104.

CONDENSATE Hydrocarbon liquids that remain liquid at standard conditions (68 degrees Fahrenheit and 29.92 inches Mercury) and are formed by condensation from, or produced with, natural gas, and which have an American Petroleum Institute gravity ("API gravity") of 40 degrees or greater.

CONSTRUCTION Except as listed below or unless defined differently for a specific regulation, construction means the fabrication, erection, installation, or modification of an air pollution source. For

Prevention of Significant Deterioration and New Source Review purposes, construction means any physical change or change in the method of operation (including, but not limited to, fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

CONTINUOUS MONITORING SYSTEM A comprehensive term that may include, but is not limited to, continuous emission monitoring systems, continuous opacity monitoring systems, continuous parameter monitoring systems, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by the regulation.

CONTROL DEVICE (STATIONARY) The air pollution control equipment used to remove air pollutants generated by a stationary source.

CONTROL DEVICE (MOBILE) Air pollution control equipment used to remove air pollutants generated by mobile sources.

CRUDE OIL Raw petroleum as it comes from the well, as pyrolyzed from kerogen, processed from tires, or recovered from other processes.

CYCLONIC FLOW Spiraling movements of exhaust gases within a duct or stack.

DAY A single twenty-four hour period from midnight to midnight or other twenty-four hour period as approved by the Division on a case-by-case basis.

DEPARTMENT The Colorado Department of Public Health and Environment.

DEPARTMENT OF REVENUE The Colorado Department of Revenue.

DESIGNATED REPRESENTATIVE A responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with Subpart B of Code of Federal Regulations, Title 40, Part 72, to represent and legally bind each owner and operator, as a matter of law, in matters pertaining to the acid rain program. Whenever the term responsible official is used, it shall be deemed to refer to the designated representative with regard to all matters under the acid rain program.

DIRECT PM2.5 EMISSIONS Solid particles emitted directly from an air emissions source or activity, or gaseous emissions or liquid droplets from an air emissions source or activity which condense to form particulate matter at ambient temperatures. Direct PM2.5 emissions include elemental carbon, directly emitted organic carbon, directly emitted sulfate, directly emitted nitrate, and other inorganic particles (including but not limited to crustal material, metals, and sea salt).

DIVISION The Air Pollution Control Division of the Colorado Department of Public Health and Environment except where specifically designated as the Division of Administration of the Colorado Department of Public Health and Environment.

DUST HANDLING EQUIPMENT Any equipment used to transport, convey, or otherwise handle particulate matter that has been collected by an air pollution control device.

EMERGENCY POWER GENERATOR A generator whose sole function is to provide back-up power when electric power is interrupted. Periodic testing of these generators and associated control and switching systems to insure that they are properly functioning will not prevent such a generator from being designated an emergency power generator.

EMISSION The discharge or release into the atmosphere (ambient air) of one or more air pollutants.

EMISSION CONTROL REGULATION Any standard promulgated by regulation that is applicable to all air pollutant sources within a specified area and that prohibits or establishes permissible limits for specific types of emissions in such areas. Also any regulation that by its terms is applicable to a specified type of facility, process, or activity for the purpose of controlling the extent, degree, or nature of pollutants emitted from such type of facility, process, or activity, any regulation adopted for the purpose of minimizing or preventing the emission of any air pollutant in potentially dangerous quantities, and also any regulation that adopts any design, equipment, work practice, or operational standard. Emission control regulations shall not include standards which describe maximum ambient air concentrations of specifically identified pollutants or which describe varying degrees of pollution of ambient air. Emission control regulations pertaining to hazardous air pollutants shall be consistent with the emission standards promulgated under Section 112 of the Federal Act or Colorado Revised Statutes § 25-7-109.3 of the Colorado Act in preventing or reducing emissions of hazardous air pollutants, and may include application of measures, processes, methods, systems, or techniques, including, but not limited to, measures that:

a. Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials, or other modifications;

b. Enclose systems or processes to eliminate emissions;

c. Collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emissions point;

d. Are design, equipment, or work practice standards (including requirements for operator training or certification); or

e. A combination of a. through d., above.

EMISSION STANDARD See Standard of Performance.

EMISSIONS UNIT Any part or activity of a stationary source that emits or has the potential to emit any air pollutant regulated under the state or Federal Acts. This term is not meant to alter or affect the definition of the term “unit” for purposes of Title IV (acid deposition control) of the federal act, or of the term “source” for purposes of the Air Pollutant Emission Notice requirements of Regulation Number 3, Part A, Section II.B.3.

ENFORCEABLE Means all requirements contained in any permit issued in accordance with Regulation Number 3 and all regulatory requirements promulgated by the Commission, the state Act, consent decrees, and any requirements that are federally enforceable.

EQUIVALENT METHOD OF SAMPLING AND ANALYSIS Any method of sampling and analysis of an air pollutant that has been demonstrated to the Division's satisfaction as having a consistent and quantitatively known relationship to a reference test method.

EXCAVATION The removal of surface material, that may or may not be replaced, for the purpose of constructing or installing a structure or piece of equipment.

EXCESS EMISSION Emissions of an air pollutant in excess of a performance standard promulgated by the Commission.

FEDERAL ACT The Federal "Clean Air Act", 42 U.S.C. Section 7401 et seq.

FEDERALLY ENFORCEABLE Means all limitations and conditions which are enforceable by the U.S. EPA Administrator, including, but not limited to: (1) those requirements developed pursuant to Code of Federal Regulations Title 40, Parts 60, 61, 63, and 72; (2) requirements within any U.S. EPA-approved State Implementation Plan; (3) requirements in operating permits issued under an U.S. EPA-approved program; and (4) any requirements in permits for new or modified sources which are issued pursuant to the Code of Federal Regulations Title 40, § 52.21 or under regulations approved by the U.S. EPA pursuant to the Code of Federal Regulations Title 40, Part 51, Subpart I; except those permit requirements specifically identified as state-only enforceable requirements, or specifically incorporating Colorado regulatory requirements (other than the incorporation of federal requirements) not in the State Implementation Plan. Limitations and conditions voluntarily sought or accepted and included in operating permits or permits governing new or modified sources which are issued under regulations approved by the U.S. EPA, for the purpose of avoiding classification as a major source or major modification or of enabling a source to take advantage of the early reduction program under Section 112 of the Federal Act, are also federally enforceable.

FIXED CAPITAL COST The capital needed to provide all the depreciable components.

FOSSIL FUEL Natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such materials.

FOSSIL FUEL AND/OR WOOD RESIDUE FIRED STEAM GENERATING UNIT A furnace or boiler burning a fossil fuel and/or wood residue and producing steam by heat transfer.

FOUNDRY A facility engaged in the melting or casting of metals or alloys.

FUEL BURNING EQUIPMENT Any furnace, boiler, or other equipment and appurtenances thereto, burning fuel solely for the purpose of producing heat, but not including: (1) internal combustion engines, or (2) combustion sources that are a part of a manufacturing process where the emissions are intermixed with the process emissions.

FUGITIVE EMISSIONS Emissions that could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

GREENHOUSE GAS Means the aggregate group of the following six greenhouse gases: carbon dioxide (CO2), nitrous oxide (N2O), methane (CH4), hydrofluorcarbons (HFCs), perfluorcarbons (PFCs), and sulfur hexafluoride (SF6). These gases are treated in aggregate based on the total carbon dioxide equivalent (CO2e) of each gas as the pollutant GHG. See definition for carbon dioxide equivalent (CO2e).

GRADING The movement of soil for the purpose of establishing grade and drainage.

HAUL ROADS Roads that are used for commercial, industrial or governmental hauling of materials and which the general public does not have a right to use.

HAZARDOUS AIR POLLUTANT (HAP) An air pollutant that presents through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances that are known to be, or may reasonably be anticipated to be carcinogenic, mutagenic, teratogenic, neurotoxic, that cause reproductive dysfunction, or that are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise and that has been listed pursuant to Section 112 of the Federal Act, or § 25-7-109.3 of the state Act.

HIGHLY VOLATILE ORGANIC COMPOUND A volatile organic compound or mixture of such compounds with a vapor pressure in excess of 570 torr (11 pounds per square inch absolute (psia)) at 20 degrees Celsius or 68 degrees Fahrenheit.

HIGH TERRAIN Any area having an elevation of nine hundred feet or more above the base of the stack of the source.

HOURLY PERIOD Any sixty-minute period.

HYDROCARBON (HC) An organic compound consisting only of carbon and hydrogen.

INCINERATOR Any equipment, device, or contrivance used for the destruction of solids, liquids or gaseous wastes by burning. Excludes devices commonly called wigwam waste burners used exclusively to burn wood wastes and incinerating toilet waste. Excludes devices commonly called Air Curtain Destructors used exclusively to burn 100% wood waste, clean lumber, or yard waste generated as a result of projects to reduce the risk of wildfire and is not operated at a commercial or industrial facility. Any Air Curtain Destructor subject to 40 CFR Part 60 incinerator requirements is considered an incinerator.

INDIAN GOVERNING BODY The governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

INDIAN RESERVATION Any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

INTERMITTENT SOURCES Those stationary sources of air pollution that do not operate on a continuous basis for a period of time sufficient to allow for opacity observations in accordance with U. S. EPA Method 9.

ISOKINETIC SAMPLING Sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point.

LEAD (PB) Elemental lead, lead containing alloys and compounds of lead.

LOW TERRAIN Any area other than high terrain.

MACHINE SHOP A facility performing cutting, grinding, turning, honing, milling, debarring, lapping, electro-chemical machining, etching, or other similar operations.

MALFUNCTION Any sudden and unavoidable failure of air pollution control equipment or process equipment or unintended failure of a process to operate in a normal or usual manner. Failures that are primarily caused by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

MANUFACTURING PROCESS OR PROCESS EQUIPMENT An action, operation, or treatment involving chemical, industrial, or manufacturing factors, such as heat treating furnaces, or fuel-burning devices that are a part of a manufacturing process where emissions are intermixed with the process emissions, heating and reheating furnaces, sintering trains, electric furnaces, kilns, dryers, roasters, painting ovens, direct fired drying ovens, crushers, and all other methods and forms of manufacturing or processing that emit, or affect the emission of air pollutants, but not including fuel-burning equipment.

MONITORING SYSTEM The complete set of equipment required under Regulation Number3 that is used to measure and record, if so required, those parameters specified.

MOTOR VEHICLE Any self-propelled vehicle that is designed primarily for travel on the public highways and that is generally and commonly used to transport persons and property and for which registration in Colorado is required for operation on public roads and highways as defined in Colorado Revised Statute § 42-1-102(58).

MOTOR VEHICLE EXHAUST GAS ANALYZER Any instrument adopted by the Commission that is used to measure the concentrations or mass of hydrocarbons, carbon monoxide, nitrogen oxides, oxygen and carbon dioxide in motor vehicle exhaust.

NEGLIGIBLY REACTIVE VOLATILE ORGANIC COMPOUNDS (NRVOCs) The U.S. EPA definition of volatile organic compounds located in the Code of Federal Regulations Title 40, § 51.100 (s), referred to within these regulations as Negligibly Reactive Volatile Organic Compounds is hereby incorporated by reference by the Commission and made a part of the Colorado Air Quality Control Commission Regulations. Materials incorporated by reference are those in existence as of the date of this regulation 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 80246-1530, 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.

The list of Negligibly Reactive Volatile Organic Compounds is included for easier reference:

Methyl Acetate
Acetone
Methane
Ethane
Methylene Chloride (Dichloromethane)
1,1,1-Trichloroethane (Methylchloroform)
1,1,2-Trichloro-1,2,2-Trifluoroethane (CFC-113)
Trichlorofluoromethane (CFC-11)
Dichlorodifluoromethane (CFC-12)
Chlorodifluoromethane (HCFC-22)
Trifluoromethane (HFC-23)
1,2-Dichloro 1,1,2,2-Tetrafluoroethane (CFC-114)
Chloropentafluoroethane (CFC-115)
1,1,1-Trifluoro 2,2-Dichloroethane (HCFC-123)
1,1,1,2-Tetrafluoroethane (HCFC-134A)
1,1-Dichloro 1-Fluoroethane (HCFC 141B)
1-Chloro 1,1-Difluoroethane (HCFC-142B)

2-Chloro-1,1,1,2-Tetrafluoroethane (HCFC-124)
Pentafluoroethane (HFC-125)
1,1,2,2-Tetrafluoroethane (HFC-134)
1,1,1-Trifluoroethane (HFC-143A)
1,1-Difluoroethane (HFC-152A)
Parachlorobenzotrifluoride (PCBTF)
Cyclic, Branched, or linear completely methylated siloxanes
Perchloroethylene (Tetrachloroethylene)
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)
1,3-dichloro-1.1.2.2.3-pentafluoropropane (HCFC-225cb)
1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee)
Difluoromethane (HFC-32)
Ethylfluoride (HFC-161)
1,1,1,3,3,3-hexafluoropropane (HFC-236fa)
1,1, 2, 2,3-pentafluoropropane (HFC-245ca)
1,1,2,3,3-pentafluoropropane (HFC-245ea)
1,1,1,2,3-pentafluoropropane (HFC-245eb)
1,1,1,3,3-pentafluoropropane (HFC-245fa)
1,1,1,2,3,3-hexafluoropropane (HFC-236ea)
1,1,1,3,3-pentafluorobutane (HFC-365mfc)
Chlorofluoromethane (HCFC-31)
1 chloro-1-fluoroethane (HCFC-151a)
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)
1,1,1,2,2,3,3,4,4-nonfluoro-4-methoxy-butane (C4F9OCH3)
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OCH3)
1-ethoxy-1,1,2,2,3,3,4,4,4-nonfluorobutane (C4F9OC2H5)
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OC2H5)
1,1,1,2,2,3,3,-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$, HFE-7000)
3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2(trifluoromethyl)hexane (HFE-7500)
1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea)
Methyl formate, ($HCOOCH_3$)
Tertiary Butyl Acetate
(1)1,1,1,2,2,3,4,5,5,5,-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300)
Propylene carbonate
Dimethyl carbonate
Perfluorocarbon Compounds which fall into these classes: --Cyclic Branched or Linear, Completely Fluorinated Alkanes --Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations --Cyclic, Branched, or Linear, Completely Fluorinated Tertiary amines with no unsaturations --Sulfur containing Perfluorocarbons with no Unsaturations and with Sulfur Bonds only to Carbon and Fluorine
2-amino-2-methyl-1-propanol (also known as AMP; CAS number 124-68-5)
2, 3, 3, 3-tetrafluoropropene (also known as HFO-1234yf)

trans 1-chloro-3, 3, 3-trifluoroprop-1-ene (also known as Solstice™ 1233zd(E))
HCF_2OCF_2H (also known as HFE-134)
HCF_2OCF_2 OCF_2H (also known as HFE-236cal2)
HCF_2OCF_2 CF_2 OCF_2H (also known as HFE-338pcc13)
HCF_2OCF_2 OCF_2 CF_2 OCF_2H (also known as H-Galden 1040X or H-Galden ZT 130)
trans-1, 3, 3, 3-tetrafluoropropene (also known as HFO-1234ze)

NONATTAINMENT AREA An area within Colorado designated by the Commission and approved by the U.S. EPA under the Code of Federal Regulations Title 40, § 81.306, in which ambient air concentrations of any designated pollutant exceed the National Ambient Air Quality Standards for that pollutant.

OPACITY 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.

OVERLOT GRADING Earth moving used in land development prior to the construction of structures, utilities, streets, highways or other prepared surfaces.

OWNER OR OPERATOR Any person, who owns, leases, operates, controls, or supervises a stationary source.

OZONE DEPLETING COMPOUND Any substance on the list of Class I and Class II ozone depleting compounds as defined by the Administrator of the U.S. EPA in the Code of Federal Regulations, Part 82 (2001) and as referenced in Section 602 of the Federal Clean Air Act (1990).

PARTICULATE MATTER Any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than one hundred micrometers.

PARTICULATE MATTER EMISSIONS All finely divided solid or liquid material emissions, other than uncombined water, emitted to the ambient air as measured by applicable reference methods or an equivalent or alternative method specified by the U.S. EPA, or by a test method specified in an approved State Implementation Plan.

PERSON Any individual, public or private corporation, partnership, association, firm, trust estate, the state or any department, institution or agency thereof, any municipal corporation, county, city and county, or other political subdivision of the state, or any other legal entity whatsoever that is recognized by law as the subject of rights and duties.

PETROLEUM The crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

PETROLEUM DISTILLATE A volatile organic compound or a mixture including volatile organic compounds obtained from petroleum by a process of vaporization and condensation.

PETROLEUM REFINERY Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants or other products through distillation, cracking, or reforming of unfinished petroleum derivatives.

PILOT PLANT A small-scale facility first used for experimental purposes to study the feasibility of an operation prior to constructing a full-scale plant.

PM10 Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (µm) as measured by an U.S. EPA approved reference method.

PM10 EMISSIONS Finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal ten micrometers (µm) emitted to the ambient air as measured by applicable referenced methods, or an equivalent or alternative method specified by the U.S. EPA, or by a test method specified in an approved State Implementation Plan.

POTENTIAL TO EMIT The maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state enforceable and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

PROCESS UNIT A single process or piece of process equipment.

PROCESS WEIGHT The total weight of all materials introduced into a source operation, which source causes, any discharge of air pollutants into the atmosphere. Solid fuels introduced into any specific source will be considered as part of the process weight, but liquid and gaseous fuels and combustion air, including required excess air, will not.

PROCESS WEIGHT RATE A rate established as follows:

a. For continuous source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period; or

b. For cyclical or batch unit operations or unit processes, the total process weight for a period that covers a complete operation or an integral number of such cycles divided by the hours of actual process operation; or

c. For operations not specified above, the process weights that results in a minimum value for allowable emissions.

PUBLIC ACCESS A site to which the general public has access because entry onto such site is allowed or not prevented by natural or man-made barriers. A site shall be deemed to not be accessible to the public if entry onto the property: (a) is prevented by natural barriers (e.g., wide rivers, cliffs, vast roadless areas); or (b) has man-made barriers (e.g., fences, frequent patrolling, watch dogs); or (c) has other measures or combinations of measures that effectively prevent entry onto the property by members of the general public. Posting of “no trespassing” signs alone shall not be deemed as preventing public access. Determination of public accessibility shall be made on a site-by-site basis.

REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT) Technology that will achieve the maximum degree of emission control that a particular source is capable of meeting and that is reasonably available considering technological and economic feasibility. It may require technology that has been applied to similar, but not necessarily identical, source categories. It is not intended that extensive research and development be conducted before a given control technology can be applied to the source. This does not preclude requiring a short-term evaluation program to permit the application of a given technology to a particular type of source.

REASONABLE FURTHER PROGRESS Annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan

provisions under the Federal Act, Section 110(a)(2)(I), and regular reductions thereafter) that are sufficient in the judgment of the Commission and the U.S. EPA to provide for attainment of the applicable National Ambient Air Quality Standards by the date required in Section 172(a) of the Federal Act.

RECONSTRUCTION Will be presumed to have taken place where the fixed capital cost of the new components exceeds fifty percent of the fixed capital cost of an entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions in Regulation Number 6. In determining lowest achievable emission rate for a reconstructed stationary source, the provisions of Regulation Number 6 shall be taken into account in assessing whether a new source performance standard is applicable to such stationary source.

REFERENCE TEST METHOD A method for the sampling and analysis of an air pollutant emission as designated by the U.S. EPA in the most recent edition of the Code of Federal Regulations Title 40, Part 60, Chapter 1, Appendix A, and the Code of Federal Regulations Title 40, Parts 51, 52, 61, and 63, for specific source categories and published in the Federal Register or any alternate or equivalent method approved and/or specified by the Commission or the Division and approved by the U.S. EPA.

REFINERY PROCESS UNIT A segment of the petroleum refinery in which a specific processing operation is conducted.

REFINERY PROCESS UNIT TURNAROUND Scheduled shutdown of a refinery process unit for the purpose of inspection or maintenance.

REID VAPOR PRESSURE (RVP) The absolute vapor pressure of volatile crude oil and volatile non-viscous petroleum liquids except liquefied petroleum gases as determined by the appropriate American Society for Testing and Materials method.

RESIDENTIAL STRUCTURES All buildings or other structures used primarily as a place of residence, and including both single and multi-family residential dwellings.

RESPONSIBLE OFFICIAL One of the following:

a. For a corporation: a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either: (i) The facilities employ more than two hundred and fifty persons or have gross annual sales or expenditures exceeding twenty-five million dollars (in second quarter 1980 dollars); or (ii) The delegation of authority to such representative is approved in advance by the Division;

b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

c. For a municipality, state, federal, or other public agency; either a principal executive officer, or ranking elected official. For the purposes of this section, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency; or

d. For affected sources: (i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Federal Act or the regulations, found at Code of Federal Regulations Title 40, Part 72, promulgated there under are concerned; and (ii) The designated representative under Title IV of the Federal Act or the Code of Federal Regulations Title 40, Part 72 for any other purposes under the Code of Federal Regulations Title 40, Part 70.

ROADWAYS Roads, other than haul roads, used for motorized vehicular traffic.

RUN The net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous.

SHUTDOWN The cessation of operation of an air pollutant source for any purpose.

SOLID WASTE Any waste classified as Type “zero” through Type “six” as specified by the Incinerator Institute of America.

SOURCE DEFINTIONS

a. Air Pollution Source

Any source whatsoever at, from, or by reason of which there is emitted or discharged into the atmosphere any air pollutant.

b. Indirect Source

A facility, building, structure, or installation, or any combination thereof, excluding dwellings that can reasonably be expected to cause or induce substantial mobile source activity that results in emissions of air pollutants that might reasonably be expected to interfere with the attainment and maintenance of National Ambient Air Quality Standards.

c. Mobile Source

Motor vehicles and other sources of air pollution that emit pollutants while moving and that are capable of moving, and that commonly do not remain at one site (one or more contiguous or adjacent properties owned or operated by the same person or by persons under common control).

d. Stationary Source

Any building, structure, facility, equipment, or installation, or any combination thereof belonging to the same industrial grouping that emit or may emit any air pollutant subject to regulation under the Federal Act that is located on one or more contiguous or adjacent properties and that is owned or operated by the same person or by persons under common control. Those emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road engine as defined in I.B.40. of this regulation shall not be considered a stationary source. Buildings, structures, facilities, equipment, and installations shall be considered to belong to the same industrial grouping if they belong to the same major groups; i.e., have the same two-digit codes, as described in the Standard Industrial Classification Manual, 1987, but not later amendments.

See National Technical Information Service, Order No. PB 87-100012. The manual is available for examination at the office of the Director of the Air Pollution Control Division, Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado, 80246-1530.

STACK A flue, conduit, or duct arranged to conduct an air pollutant to the ambient air. For the purposes of stack height requirements, flares will be excluded from the definition of stack.

STANDARD CONDITIONS A gas temperature of 20 degrees Celsius or 68 degrees Fahrenheit and a gas pressure of one atmosphere (760 torr).

STANDARD OF PERFORMANCE A regulation that limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

STARTUP Any setting in operation of an air pollutant source for any purpose.

STEEL PRODUCTION CYCLE The operation of a basic oxygen process furnace required to produce each batch of steel and includes the following major functions: scrap charging, preheating (when used), hot metal charging, primary oxygen blowing, additional oxygen blowing (when used), and tapping.

SUBMERGED FILL PIPE Any gasoline or petroleum distillate tank fill pipe the discharge that is entirely submerged when the liquid level is six inches above the bottom of the tank. “Submerged fill pipe” when applied to a tank that is filled from the side is defined as any fill pipe the discharge opening that is entirely submerged when the liquid level is eighteen inches above the bottom of the tank.

TERMINALS A petroleum distillate storage and distribution facility that has an average daily throughput of more than 76,000 liters (20,000 gallons) that is loaded directly into transport vehicles.

THERMAL DRYER A process in which the moisture content of a processed material is reduced by contact with a heated stream of air or other gases that are exhausted to the ambient air.

TOTAL SUSPENDED PARTICULATE (TSP) Particulate matter as measured by the method described in the Code of Federal Regulations, Title 40, Part 50, Appendix B (Hi-Volume Sampler).

TRANSFER AND LOADING SYSTEM Any equipment or processes used to transfer or load materials for storage or shipment.

UNCLASSIFIED AREA An area within Colorado that cannot, based on available information, be classified as attainment or nonattainment.

VAPOR BALANCE SYSTEM The connecting together of the vapor spaces of two vessels such that when liquid is dispensed from the first vessel into the second vessel, the vapor in the second vessel is displaced by the incoming liquid and forced through the connection into the first vessel. This vapor then occupies the space in the first vessel that is vacated by the dispensed liquid.

VAPOR RECOVERY SYSTEM A vapor collection system capable of collecting substantially all the volatile vapors and gases discharged from the storage vessel and a vapor disposal system capable of processing such vapors and gases to prevent any substantial emission to the ambient air.

VOLATILE ORGANIC COMPOUND (VOC) (see also Highly Volatile Organic Compound) Any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions, except those listed in the definition of negligibly reactive volatile organic compounds included in this regulation as having negligible photochemical reactivity. Volatile organic compounds may be measured by test methods specified in Colorado's EPA-approved State Implementation Plan, a Title V Permit, a reference method, an equivalent method, an alternative method or by procedures specified under the Code of Federal regulations Title 40, Part 60, Title 40 Part 51, Subpart I or Appendix S, or Title 40, Part 52. Prior approval from the U.S. EPA is required in order to use an equivalent or alternative method. A reference method, an equivalent method or an alternative method, however, may also measure nonreactive organic compounds. In such cases, an owner or operator may exclude the compounds listed in the definition of net emission increase when determining compliance with a standard if the amount of such compound is accurately quantified and the Division approves such exclusion. As a precondition to excluding such compounds as volatile organic compounds, or at any time thereafter, the Division may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Division, the amount of negligibly reactive compounds in the source's emissions. For the purposes of photochemical dispersion modeling, the non-criteria reportable NRVOC tertiary butyl acetate (also 2-butanone) shall be treated as a VOC.

WELFARE As used in these regulations, effects on public welfare include, but are not limited to: effects on soils; water; crops; vegetation; manmade materials; animals; wildlife; weather; visibility; climate; damage to and deterioration of property; and hazards to transportation; as well as effects on economic values and on personal comfort and well being.

WOOD RESIDUE Bark, sawdust, slabs, chips, shavings, mill trim, and other wood products derived from wood processing and forest management operations.

II. General

II.A. To Control Emissions Leaving Colorado

When emissions generated from sources in Colorado cross the state boundary line, such emissions shall not cause the air quality standards of the receiving state to be exceeded, provided reciprocal action is taken by the receiving state.

II.B. Emission Monitoring Requirements

The Division may require owners or operators of stationary air pollution sources to install, maintain, and use instrumentation to monitor and record emission data as a basis for periodic reports to the Division.

II.C. Performance Testing

II.C.1. The owner or operator of any air pollution source shall, upon request of the Division, conduct performance test(s) and furnish the Division a written report of the results of such test(s) in order to determine compliance with applicable emission control regulations.

II.C.2. Performance test(s) shall be conducted and the data reduced in accordance with the applicable reference test methods unless the Division:

II.C.2.a. Specifies or approves, in specific cases, the use of a test method with minor changes in methodology;

II.C.2.b. Approves the use of an equivalent method;

II.C.2.c. Approves the use of an alternative method, the results of which the Division has determined to be adequate for indicating where a specific source is in compliance; or

II.C.2.d. Waives the requirement for performance test(s) because the owner or operator of a source has demonstrated by other means to the Division's satisfaction that the affected facility complies with the standard. Nothing in this paragraph shall be construed to abrogate the Commission or Division's authority to require testing under the Colorado Revised Statutes, Title 25, Article 7, and pursuant to regulations promulgated by the Commission.

II.C.3. Compliance test(s) shall be conducted under such conditions, as the Division shall specify to the plant operator based on representative performance of the affected facility. The owner or operator shall make available to the Division such records as may be necessary to determine the conditions of the performance test(s). Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions of performance test(s) unless otherwise specified in the applicable standard.

II.C.4. The owner or operator of an affected facility shall provide the Division thirty days prior notice of the performance test to afford the Division the opportunity to have an observer present. The Division may waive the thirty-day notice requirement if arrangements satisfactory to the Division are made for earlier testing.

II.C.5. The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

II.C.5.a. Sampling ports adequate for test methods applicable to such facility;

II.C.5.b. Safe sampling platform(s);

II.C.5.c. Safe access to sampling platform(s); and

II.C.5.d. Utilities for sampling and testing equipment.

II.C.6. Each performance test shall consist of at least three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For determining compliance with an applicable standard, the arithmetic mean of results of at least three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Division's approval, be determined using the arithmetic mean of the results of the two other runs.

II.C.7. Nothing in this section shall abrogate the Division's authority to conduct its own performance test(s) if so warranted.

II.D. Ambient Air Monitoring Requirements (Reserved)

II.E. Affirmative Defense Provision for Excess Emissions During Malfunctions

Some provisions in this II.E. have been approved by the U.S. Environmental Protection Agency ("EPA") for incorporation into Colorado's State Implementation Plan ("SIP"). Some provisions are currently under review by the EPA. The following guide to the font styles used in this II.E. can be used to identify those provisions that have been adopted by the Air Quality Control Commission and are currently under review by the EPA.

Double underlined text will become effective when the EPA approves the language for incorporation into Colorado's SIP.

~~Double strikethrough~~ text will be effective until the EPA approves the double underlined text for incorporation into Colorado's SIP.

II.E.1. An affirmative defense to a claim of violation under these regulations is provided to owners and operators for civil penalty actions for excess emissions during periods of malfunction. To establish the affirmative defense and to be relieved of a civil penalty in any action to enforce an applicable requirement, the owner or operator of the facility must meet the notification requirements of II.E.2. in a timely manner and prove by a preponderance of evidence that:

II.E.1.a. The excess emissions were caused by a sudden, unavoidable breakdown of equipment, or a sudden, unavoidable failure of a process to operate in the normal or usual manner, beyond the reasonable control of the owner or operator;

II.E.1.b. The excess emissions did not stem from any activity or event that could have reasonably been foreseen and avoided, or planned for, and could not have been avoided by better operation and maintenance practices;

II.E.1.c. Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded.

II.E.1.d. The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

II.E.1.e. All Reasonably possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

II.E.1.f. All emissions monitoring systems were kept in operation (if at all possible);

II.E.1.g. The owner or operator's actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs or other relevant evidence;

II.E.1.h. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

II.E.1.i. At all times, the facility was operated in a manner consistent with good practices for minimizing emissions. This II.E.1.i. is intended solely to be a factor in determining whether an affirmative defense is available to an owner or operator, and ~~shall~~does not constitute an additional applicable requirement; and

II.E.1.j. During the period of excess emissions, there were no exceedances of the relevant ambient air quality standards established in the Commissions' Regulations that could be attributed to the emitting source.

II.E.2. Notification

The owner or operator of the facility experiencing excess emissions during a malfunction ~~shall~~must notify the Division verbally as soon as possible, but no later than noon of the Division's next working day, and ~~shall~~must submit written notification following the initial occurrence of the excess emissions by the end of the source's next reporting period. The notification ~~shall~~must address the criteria set forth in II.E.1.

II.E.3. The Affirmative Defense Provision contained in this II.E. ~~shall not be~~is not available to claims for injunctive relief.

II.E.4. The Affirmative Defense Provision contained in this II.E. is not available in federal court proceedings, unless the court, in considering the penalty factors in Section 113 of the Clean Air Act and exercising its discretion to assess civil penalties, decides to recognize or consider such affirmative defense or decides to take into consideration some or all of the factors described in II.E.1. and II.E.2.

II.E.~~4~~5. The Affirmative Defense Provision does not apply to failures to meet federally promulgated performance standards or emission limits, including, but not limited to, new source performance standards and national emission standards for hazardous air pollutants. The affirmative defense provision does not apply to state implementation plan (sip) limits or permit limits that have been set taking into account potential emissions during malfunctions, including, but not necessarily limited to, certain limits with 30-day or longer averaging times, limits that indicate they apply during malfunctions, and limits that indicate they apply at all times or without exception.

II.E.6. Nothing in this II.E. precludes the use of alternative emission limitations expressed as work-practice based limits or standards set forth in a permit that serve as a continuous limitation during periods of malfunction. II.E.6. will not be construed to allow any SIP emission limitation to be altered through a permit.

II.F. Circumvention Clause

A person shall not build, erect, install, or use any article, machine, equipment, condition, or any contrivance, the use of which, without resulting in a reduction in the total release of air pollutants to the atmosphere, reduces or conceals an emission that would otherwise constitute a violation of this regulation. No person shall circumvent this regulation by using more openings than is considered normal practice by the industry or activity in question.

II.G. Conflicts

Nothing in these regulations is intended to permit any practice that is a violation of any statute, ordinance or regulation.

II.H. Severability Clause

If any regulation, section, clause, phrase, or standard contained in these regulations shall for any reason be held to be inoperative, unconstitutional, void, or invalid, the validity of the remaining portions thereof shall not be affected thereby and the Commission does hereby declare that it severally passed and adopted the provisions contained therein separately and apart from the other provisions thereof.

II.I. Compliance Certifications

For the purpose of submitting compliance certifications or establishing whether a person has violated or is in violation of any standard in the Colorado State Implementation Plan, nothing in the Colorado State Implementation Plan shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed. Evidence that has the effect of making any relevant standard or permit term more stringent shall not be credible for proving a violation of the standard or permit term.

When compliance or non-compliance is demonstrated by a test or procedure provided by permit or other applicable requirement, the owner or operator shall be presumed to be in compliance or non-compliance unless other relevant credible evidence overcomes that presumption.

II.J. Affirmative Defense Provision for Excess Emissions During Startup and Shutdown

Some provisions in II.J. have been approved by the U.S. Environmental Protection Agency ("EPA") for incorporation into Colorado's State Implementation Plan ("SIP"). Some provisions are currently under review by the EPA. The following guide to the font styles used in II.J. can be used to identify those provisions that have been adopted by the Air Quality Control Commission and are currently under review by the EPA.

Double underlined text will become effective when the EPA approves the language for incorporation into Colorado's SIP.

~~Double strikethrough~~ text will be effective until the EPA approves the double underlined text for incorporation into Colorado's SIP.

II.J.1. An affirmative defense is provided to owners and operators for civil penalty actions for excess emissions during periods of startup and shutdown. To establish the affirmative defense and to be relieved of a civil penalty in any action to enforce an applicable requirement, the owner or operator of the facility must meet the notification requirements of paragraph 2 in a timely manner and prove by a preponderance of the evidence that:

II.J.1.a. The periods of excess emissions that occurred during startup and shutdown were short and infrequent and could not have been prevented through careful planning and design;

II.J.1.b. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation or maintenance;

II.J.1.c. If the excess emissions were caused by a bypass (an intentional diversion of control equipment), then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

II.J.1.d. The frequency and duration of operation in startup and shutdown periods were minimized to the maximum extent practicable;

II.J.1.e. All possible steps were taken to minimize the impact of excess emissions on ambient air quality;

II.J.1.f. All emissions monitoring systems were kept in operation (if at all possible);

II.J.1.g. The owner or operator's actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs or other relevant evidence; and,

II.J.1.h. At all times, the facility was operated in a manner consistent with good practices for minimizing emissions. This subparagraph h., is intended solely to be a factor in determining whether an affirmative defense is available to an owner or operator, and ~~shall~~does not constitute an additional applicable requirement.

II.J.2. Notification: The owner or operator of the facility experiencing excess emissions during startup and shutdown ~~shall~~must notify the Division verbally as soon as possible, but no later than two (2) hours after the start of the next working day, and ~~shall~~must submit written quarterly notification following the initial occurrence of the excess emissions. The notification ~~shall~~must address the criteria set forth in paragraph 1 above.

II.J.3. The Affirmative Defense Provision contained in this section ~~shall not be~~is not available to claims for injunctive relief.

II.J.4. The Affirmative Defense Provision contained in this II.J. is not available in federal court proceedings, unless the court, in considering the penalty factors in Section 113 of the Clean Air Act and exercising its discretion to assess civil penalties, decides to recognize or consider such affirmative defense or decides to take into consideration some or all of the factors described in II.J.1. and II.J.2.

II.J.~~4~~5. The Affirmative Defense Provision does not apply to State Implementation Plan provisions or other requirements that derive from new source performance standards or national emissions standards for hazardous air pollutants, or any other federally enforceable performance standard or emission limit with an averaging time greater than twenty-four hours. In addition, an affirmative defense cannot be used by a single source or small group of sources where the excess emissions have the potential to cause an exceedance of the ambient air quality standards or Prevention of Significant Deterioration (PSD) increments.

II.J.6. Nothing in this II.J. precludes the use of alternative emission limitations expressed as work-practice based limits or standards set forth in a permit that serve as a continuous limitation during periods of startup and shutdown. This II.J.6. will not be construed to allow any SIP emission limitation to be altered through a permit.

II.J.~~5~~7. Affirmative Defense Determination: In making any determination whether a source established an affirmative defense, the Division shall consider the information within the notification required in II.J.2. and any other information the Division deems necessary, which may include, but is not limited to, physical inspection of the facility and review of documentation pertaining to the maintenance and operation of process and air pollution control equipment.

III. (State Only) Civil Penalties

III.A.

As specified in Colorado Revised Statutes (CRS), § 25-7-122 (July 2, 2020), any person who violates any requirement or prohibition of an applicable emission control regulation of the Commission; the state implementation plan; a construction permit; an operating permit, including failure to obtain a permit, to operate in compliance with any term or condition of the permit, or to pay any permitting fees; commits a violation of the accidental release prevention program; any provision for the prevention of significant deterioration under CRS, § 25-7-201 et seq.; any provision related to attainment under CRS, § 25-7-301 et seq.; or any provision of CRS, §§ 25-7-105, 25-7-106, 25-7-106.3, 25-7-108, 25-7-109, 25-7-111, 25-7-112,25-7-113, 25-7-114.2, 25-7-114.5, 25-7-118, 25-7-206, 25-7-403, 25-7-404, 25-7-405, 25-7-407, 42-4-403, 42-4-404, 42-4-405, 42-4-406, 42-4-407, 42-4-409, 42-4-410, or 42-4-414 may be subject to a civil penalty of not more than forty-seven thousand three hundred fifty-seven dollars per day for each day of the violation.

III.B. Annual adjustment

III.B.1. Beginning in 2021, the Commission shall, by rule, annually adjust the amount of the maximum civil penalty based on the percentage change in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood for all items and all urban consumers (CPI), or its successor index.

III.B.2. The annual adjustment is based on the percentage by which the CPI for July of the current year exceeds the CPI for July of the previous year.

III.B.3. Based on the 3.512% percentage change in the CPI from July 2020 to July 2021, the maximum civil penalty effective January 1, 2022 is $49,020 per day for each day of the violation.

Table 1 – Maximum civil penalty

Date	CPI	Change in CPI	Maximum Civil Penalty	Penalty Effective Date
July 2020	275.589	Not applicable	$47,357	July 2, 2020
July 2021	285.268	3.512%	$49,020	January 1, 2022

IV. Reserved

V. Statements of Basis, Specific Statutory Authority and Purpose

V.A. Adopted December 14, 1978 - Definitions

Rationale and Justification for Revisions to the Common Provisions Regulation

The principal reason for revising the Common Provisions Regulation is the need for the addition of certain definitions required by the revisions of the other regulations. Opportunity was taken at the same time to revise some definitions in an effort to add clarity. Few changes were made in I., even though some questions were raised regarding I.D. - Intent.

Consideration was given to the suggestions of the Division and the Parties to the hearing with respect to the definitions. In some instances, the original definitions were retained; in others, they were modified. For example: (1) the original definition of “air contaminant” was retained; the Union Oil suggestion was far less precise; (2) the Public Service Company definition of “air contaminant source - new source,” replaces the original version; (3) for “steel production cycle,” the CF&I version was adopted. Generally, the Commission worked through the original definitions and the various suggestions for change and finally adopted those versions they concluded were best in terms of clarity and intent.

Considerable attention was paid to the definition of “modification” and a version selected which would encourage existing sources within the state to install new pollution control equipment even though a slight increase in emissions of sulfur dioxide would result if these increases (a) occurred in a sulfur dioxide attainment area, and (b) if the existing source sulfur dioxide standard would be met.

The notification period prior to performance testing was shortened to 30 days with the provision the Division could waive this interval if it so decided. The CF&I request for exemption of sources emitting less than 100 tons per year from performance testing was rejected in that no means would exist to detect violations of the emission standard without such testing.

Rationale and Justification Addition to Common Provisions Conflict of Interest

The purpose of this regulatory addition is to set forth standards of conduct as it relates to conflict of interest in the course of operation of both the Colorado Air Pollution Control Commission and the Colorado Air Pollution Variance Board. This regulation essentially establishes in written form that which has been the practice of the Commission and the Variance Board during the course of hearings conducted by the respective bodies.

This regulation will also bring Colorado into compliance with Section 128 of the Clean Air Act, which requires that “any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.” The Clean Air Act also provides that a state may adopt requirements respecting conflicts of interest for such boards or bodies, which are more restrictive than the requirements of the Act.

The Commission believes this regulation satisfies both the requirements of the Federal Act and the State Administrative Procedures Act as well as setting forth expected standards of conduct.

V.B. Adopted June 5, 1980 — Abbreviations and Definitions

Rationale and Justification for the Repeal and Repromulgation of Regulation Number 3 and Common Provisions Regulation as Related to Regulation Number 3

On December 14, 1978, the Air Quality Control Commission revised Regulation Number 3 (concerning requirements for filing air pollution emission notices, obtaining emission permits, and payment of fees with respect to both) for the primary purpose of bringing Colorado's air pollutant emission permit program into conformity with the requirements of the Federal Clean Air Act Amendments of 1977 to the extent authorized by the then effective state statutory authority: "The Air Pollution Control Act of 1970," C.R.S. 1973, 25-7-101 et seq. The regulation as revised in 1978 and which became effective January 30, 1979, was submitted to the U.S. EPA as a revision to the State Implementation Plan ("SIP") pursuant to Subsection 129(c) of the Federal Clean Air Act Amendments of 1977.

Since that submittal, the Colorado General Assembly has repealed and reenacted the state's basic air pollution control statute: Article 7 of Title 25, Colorado Revised Statutes, 1973, The new article, known as the "Colorado Air Quality Control Act" (designated House Bill 1109 in the 1979 Legislative session), became effective June 20, 1979, and largely brought the state statute into conformity with the Federal legislation, mandating the Commission to develop a comprehensive air pollution control program meeting the requirements of the Federal Clean Air Act.

The primary purpose of this current revision of Regulation Number 3 is to implement the new provisions of HB 1109 and to further bring the permit aspects of the Colorado air pollution control program into compliance with the requirements of the Federal Clean Air Act.

Revisions also respond to the requirements set forth in the October 5, 1979 Federal Register notice which conditionally approved portions of the Colorado SIP and set forth certain requirements for securing their unconditional approval. E.g., see Section IV.D.2.a.(iv) of revised Regulation Number 3 which incorporates the requirements of Section 172(b)(11)(A) of the Clean Air Act. 44 Fed. Reg. 57401, 57408 (1979).

The Commission has made an effort to formulate a permit program meeting the requirement of and paralleling of the provisions of EPA policies and rules to the extent authorized by House Bill 1109 and to the extent deemed appropriate by the Commission for Colorado's particular circumstances. This has been done in order to meet certain specific requirements expressly set forth in the Federal Clean Air Act, to meet certain specific requirements EPA has determined are required for compliance with the Federal Act, and to avoid subjecting sources of air pollution in Colorado to differing State and Federal requirements. The Commission considered the assurance of reasonable further progress toward attainment of National Ambient Air Quality Standards as the primary underlying criterion in developing permit requirements for sources located in or near nonattainment areas.

Consideration has also been given to the opinion of the United States Court of Appeals for the District of Columbia in the case of Alabama Power Company v. Costle ___ F.2d __ D.C. Cir., (1979).

APENs

In order to reduce the administrative burden on both the Air Pollution Control Division ("the Division") and owners and operators of air pollution sources, the filing of revised air pollution emission notices for the purpose of reporting significant changes in emissions will be required only on an annual basis, rather than whenever a significant change in emissions occurs. In making this revision, the Commission relied on the representations of the Division that annual reporting would be sufficient for purposes of keeping the emissions inventory current.

Street Sanding

With the exception of street sanding (and indirect sources), the exemptions provided in the revised regulation from the APEN-filing and emission permit requirements are for minor or insignificant sources of emissions.

Although not finding that particulate emissions resulting from the application and reentrainment of “sand” applied to snow or ice covered roadways as a traffic safety measure are insignificant, the Commission has exempted sanding from the APEN-filing and permit requirements out of administrative necessity.

Little benefit can be obtained from the filing of APENs in light of the fact that the amount of emissions cannot be predicted with any reasonable accuracy due to varying factors such as weather. APENs would therefore serve little purpose as notices of expected emissions.

It is the judgment of the Commission that protection of persons and property by sanding snow and ice covered roadways is an overriding consideration and that the costs of not taking such safety measures would far outweigh any air quality benefits resulting from requiring permits for sanding. Sanding should not therefore be prohibited — even without a permit. The only reason for imposing a permit requirement would be to facilitate enforcement of control measures to limit emissions which the Commission believes may be accomplished without a permit requirement through emission control regulations and provisions in local elements of the State Implementation Plan.

Major Sources, Major Modifications, and the “Bubble” Concept

The Commission has retained requirements that new “major sources” locating in nonattainment areas and “major modifications” to existing sources in nonattainment areas meet special requirements (Offsets, LAER, etc.) designed to allow the continued development in such areas without interfering with reasonable further progress toward attainment of National Ambient Air Quality Standards. The criteria for determining when a new source or modification to an existing source is “major” however, have been extensively revised.

Prior to the U.S. Court of Appeals Decision in Alabama Power Company v. Costle, EPA had defined “potential to emit” — a key phrase in the definition of “major emitting facility” — in terms of uncontrolled emissions. The court however, interpreted the phrase “potential to emit” as used in the definition of “major emitting facility” in Section 169(1) of the Clean Air Act as taking “into account the anticipated functioning of the air pollution control equipment designed into the facility,” thereby drastically reducing the number of sources qualifying as major. In response to this decision, on September 5, 1979, EPA proposed amendments to its regulations concerning requirements for SIPs including those pertaining to Prevention of Significant Deterioration of air quality (“PSD”) and new source review in nonattainment areas, as well as EPA's Emission Offset Interpretative Ruling. 44 Fed. Reg. 51924 (1979). The Commission in reviewing Regulation Number 3 and the Common Provisions Regulation has incorporated many of the amendments adopted by EPA in its regulations including classifications of sources as major or minor based on controlled emissions.

The court in Alabama Power Company struck down the EPA regulation definition of “major modification” which definition required the imposition of the special nonattainment area requirements (Offsets, LAER, etc.) on sources when modifications resulted in an increase in emissions of criteria pollutants of 100 tons per year or more (for certain listed categories of sources; 250 tons or more for sources not listed). The court held that the special nonattainment requirements applied to all modifications of major emitting facilities except those resulting in only - “de minimus” increases in emissions. The court stated, however, that it would be permissible to look at the net increase in potential emissions from a major source in determining whether Offsets, LAER, etc., will be required.

In its proposed rules, EPA has adopted the “net increase” or “bubble” approach which generally allows a major source undergoing modification to avoid permit review as a major modification by allowing emission reductions elsewhere at the source to offset any increases resulting from the proposed modification. The Commission has adopted the “bubble” concept and many of EPA's specific regulatory provisions with respect to the concept as applied to modifications.

The court in Alabama Power Company also held that fugitive emissions could be included in determining whether a source is “major” only to the extent such emissions were expressly determined to be included by rule of the EPA administrator. In response, EPA has proposed a regulatory definition of “potential to emit” by which fugitive emissions from twenty-seven (27) listed sources would be included in determinations of which new sources and modifications are major. 44 Fed. Reg. 51956, 51958 (1979). In recognition of the fact that such emissions would be included in a determination of whether a source or modification was major if they were emitted through a stack (as opposed to being “fugitive”), recognizing that generally emissions from the twenty-seven (27) listed source categories contribute to hazards to public health and welfare, and to be consistent with the Federal scheme, the Commission has also decided to consider fugitive emissions from the twenty-seven source categories in major source/major modification determinations to the extent they are quantifiable. An owner or operator may avoid the inclusion of fugitive emissions of particulate matter by demonstrating that such emissions are of a size and substance, which do not adversely affect public health or welfare.

Banking

C.R.S. 1973, 25-7-304 requires the attainment program to provide that emission reduction offsets exceeding those required for the granting of a permit “may be preserved for sale or use in the future.” Section V. of Regulation Number 3 establishes an administrative framework and the basic requirements for such a procedure consistent with the “banking” provisions established by EPA in its Emission Offset interpretative ruling, 44 Fed Reg. 3274, 3280, 3285 (January 16, 1979) (to be codified as Appendix S to 40 C.R.S. Part 51).

Extended “Debugging” Period

Pursuant to C.R.S. 1973, 25-7-114(4)(j), the Division may grant the owner or operator of a new source up to six months after commencement of operation in which to demonstrate compliance with all terms and conditions of its emission permit. The Commission determined, however, that under certain circumstances it would be appropriate to allow a source employing innovative control technology additional time in which to bring the operation of the source into full compliance. Therefore, pursuant to its authority under C.R.S. 1973, 25-7-109(5), the Commission has provided in paragraph IV.H.6. of Regulation Number 3 for such temporary relief from controls under specified limited circumstances. The provision is intended for very limited application.

PSD

Regulation Number 3 does not address the subject of special permits for major sources locating in attainment areas to insure Prevention of Significant Deterioration of air quality. The Commission decided to wait until EPA's PSD regulations have been finalized before attempting to promulgate State regulations to establish a fully State-operated program. State emission permits are nonetheless still required for sources locating in attainment areas.

Common Provisions Regulation

In connection with the revision of Regulation Number 3, the Commission concurrently made limited, related revisions in its Common Provisions Regulation. Sections I.B. and I.C. of that regulation have been changed to reflect the renumbering of the sections in the State statute authorizing the Commission to promulgate regulations and to reflect the amended language in the declaration of legislative intent.

Section I.F. of the regulation was amended to add new abbreviations used in revised Regulation Number 3 and Section I.G. (definitions) was amended to delete, revise, and add terms and their definitions to reflect changes in the terminology used in Regulation Number 3.

V.C. Adopted May 13, 1982 - Public Comment

Statement of Basis and Purpose Concerning May 13, 1982 Amendment to Section IV.C. (Public Comment) for Small Sources Locating in Nonattainment Areas

The rationale for this proposed revision is based on the underlying purpose of public comment: to obtain public input on proposed sources that the Air Pollution Control Division (APCD) can use in considering whether a permit should be granted.

Under the previous regulation, all sources locating in nonattainment areas were subject to the public comment requirement unless the APCD exercised its discretion under Section IV.C.3. (sources of less than 6 month's duration) to exempt them. APCD experience has shown that there are four categories of small sources that frequently locate in nonattainment areas, but which did not stimulate comment from the public. These categories are: (1) service stations; (2) restaurants; (3) land development (houses and commercial); and (4) other small sources (such as concrete batch plants). Basically, all the effort put into preparation of public comment packages for these sources can now be used more efficiently and the associated expense to industry saved.

The limit of 5 Tons Per Year (TPY) of controlled annual emissions is based on calculations that show most of the sources in these four categories emit less than 5 TPY of any one pollutant. Service stations, for example, generally emit 1 to 2 TPY. In many cases, less than 1 TPY is emitted.

Under the revised regulation, sources less than 5 TPY can still be subject to public comment if the Division determines it appropriate based on criteria set forth in the regulation. The difference is that the APCD would have discretion to decide instead of being required to provide public notice. Controversial sources such as gravel pits, odor sources and landfill operations are subjected to public comment by the APCD regardless of the level of emissions. This practice will continue in effect.

V.D. Adopted March 10, 1983 - Prevention of Significant Deterioration

Statement of Basis and Purpose for the Prevention of Significant Deterioration Program Regulations

This Statement of Basis and Purpose for the Prevention of Significant Deterioration (PSD) Program Regulations complies with the State Administrative Procedure Act, CRS 1973, 24-4-103(4). The statutory authority for the PSD regulations are in the Air Quality Control Act at CRS 1973, 25-7-102, 25-7-105, 25-7-106, 25-7-108, 25-7-109, 25-7-114, 25-7-116, 25-7-201 et seq. The general purpose of these regulations is to prevent the significant deterioration of air quality in those sections of the state, which has attained the national ambient air quality standards. The parties to this rulemaking include:

Colorado Association of Commerce and Industry; Rocky Mountain Oil amp; Gas Association, Inc.; Chevron Shale Oil Company; Union Oil Company of California; Colorado Ute Electric Association, Inc.; The Colorado Mountain Club; COAL; Public Service Company of Colorado; City of Colorado Springs; CF&I Steel; Environmental Defense Fund, Inc.; United States Department of the Interior; and United States Department of Agriculture.

The Air Pollution Control Division acted as staff for and advised the Commission during the proceeding. See CRS 1973, 25-7-111(2)(g).

The PSD regulations adopted by the Commission are in many respects identical to the U.S. EPA PSD regulations. See 40 CFR 51.24 et seq.; 40 CFR 52.21 et seq. The primary reason for this is that the State Act requires that the State PSD program be in accordance with the federal Clean Air Act PSD provisions. See CRS 1973, 25-7-203. Thus, federal PSD requirements are generally a minimum for the State PSD Program. For these reasons, to the extent that the federal PSD rules are identical or substantially identical to the state regulations, the Commission incorporates herein the EPA statements of basis and purpose for the federal PSD rules at 43 Fed. Reg. 26380 et seq. (June 19, 1978) and 45 Fed. Reg. 52676 et seq. (August 7, 1980).

The Commission has additional authorities to prevent significant deterioration of air quality. In several important areas the Commission has tailored these regulations to meet the concerns of Colorado citizens. These areas include the requirement for an impact analysis on water to determine acid deposition effects, the authority to make independent determinations on adverse impact to visibility in Class I areas if the federal land manager fails to fulfill his responsibility to do so, the requirement to establish baselines for, and to monitor air quality related values in, Class I areas to determine the effects of emissions on such values, and the application of Class I sulfur dioxide increments to several Class II primitive areas and national monuments.

The proposed PSD regulations included several provisions reflecting the terms of a settlement agreement in the matter of Chemical Manufacturer's Association, et al. v. EPA in which EPA has agreed to propose amendments to its PSD rules. The Commission has rejected the adoption of such provisions for several reasons. They are arguably less stringent than current EPA rules in that they would appear to permit more air pollution. Because they may be less stringent, their adoption appeared likely on the basis of EPA testimony to impede the approval of the state PSD program by EPA at this time. Finally, EPA's schedule for consideration of such provisions is unknown. Subsequent to EPA action on the provisions of the settlement agreement, the Commission will reconsider those provisions.

The PSD regulations will generally not become applicable to major sources or major modifications in Colorado until EPA has approved them. See CRS 1973, 25-7-210. However, the regulations pertaining to attainment area designations and the enforcement of Class I sulfur dioxide increments in those areas listed in CRS 1973, 25-7-209 will be applicable upon the effective date of these regulations. These regulations will be effective twenty (20) days from publication in the Colorado Register.

DEFINITION OF “ACTUAL EMISSIONS”

The definition adopted is essentially identical to the EPA definition.

One party proposed that reference should be made to consideration of control efficiency. The Commission did not adopt this proposal because the definition inferentially considers control equipment efficiency and the reference requested would create confusion, when actual test data were available, as to whether a separate “efficiency” factor was to be applied.

Another party, in commenting on the definition of “baseline concentration,” expressed concern that the determination of “actual emissions” could take place, for example, during a low-demand period for a power plant. Such determination would result in an emission rate considerably less than the full-capacity allowable emission rate, resulting in a low baseline concentration. The power plant, operating the next year at full capacity, could consume all or most of the available increment, prohibiting growth in the area. The Commission recognizes that, for certain sources such as power plants (i.e., fossil fuel-fired steam generators), the source must respond to constantly changing demands with significant changes in emissions from year to year. Therefore, for fossil fuel-fired steam generators, “allowable emissions” should generally be considered “representative of normal unit operation” rather than actual emissions in determinations of “actual emissions” for determining baseline concentration and increment consumption, unless it is clearly demonstrated that a lower level of emissions will never be exceeded.

DEFINITION OF “BASELINE AREA” AND “BASELINE DATE”

“Baseline area” is not specifically defined in the State Act but is simply referred to as “an area subject to this article” in the definition of baseline concentration. CRS 1973, 25-7-202. The Federal Clean Air Act definition of “baseline concentration,” Section 169(4), is identical to the states, and EPA has interpreted” an area subject to this article” to mean the attainment and unclassifiable areas designated pursuant to Section 107(d)(1)(D) or (E) of the Federal Clean Air Act. Such an interpretation is also reasonable under the Colorado Air Quality Control Act which states that the Commission shall adopt measures “to prevent significant deterioration of ambient air quality in each region, or portion thereof, of the state identified pursuant to Section 107(d)(1)(D) or (E) of the Federal Act.” The result of EPA's definition is that the entire state is the baseline area for SO_2, and air quality control regions for particulate matter.

Several parties proposed alternative approaches to the definition of baseline area. These approaches ranged from a modeled 1 $\mu g/m^3$ impact area (based on 7.5 minute quadrangles, the county-township-range-section system, or a metric grid) to the entire state.

The Commission adopted the EPA definition for the following reasons:

(1) The EPA approach has been in effect for several years and has proven workable. EPA has well-developed procedures for performing source impact analyses in large baseline areas which the state can use. Changing the definition of baseline area would result in use of an approach that has not been proven and that would cause a discontinuity for the regulated industries when the PSD program is delegated to the state.

(2) The use of areas larger than the source impact area means that baseline concentrations will be determined at an earlier date, and increments will be consumed from an earlier date, thus minimizing air quality deterioration. This fulfills the primary purpose of the State Act. See CRS 1973, 25-7-102.

Certain parties were concerned that baseline areas larger than the impact area might unnecessarily inhibit economic growth in the unaffected portion of the baseline area, but should that occur, and there are no specific examples in the record of where that would occur, the Commission could consider subdividing baseline areas to allow for a new baseline date and concentration. Testimony from Pitkin County and members of the general public indicated concern that with small baseline areas, minor source emission increases would continue to raise the background ambient air concentrations, especially for particulate matter, before a major source would locate in an area to begin the counting of increment consumption.

The baseline areas selected by the Commission for particulate matter represent a balance between a recognition that particulate matter emissions are often a more localized problem than are gaseous emissions (hence the use of AQCRs for particulate matter instead of the entire state, as is the approach for SO_2) and the need to begin counting increment consumption expeditiously (hence, the use of AQCRs for particulate matter rather than the smaller impact area). Only two AQCRs in Colorado have been triggered during the six years PSD has been in effect. Since triggered baseline areas can in the future be subdivided into triggered and untriggered areas, the Commission considers the use of baseline areas the size of AQCRs sufficiently flexible for purposes of reasonable application, economic growth, and prevention of air quality deterioration.

(3) Use of a baseline area equivalent to the 1 $\mu g/m^3$ impact area could result in a situation where impacts on a Class I area individually were each less than 1 $\mu g/m^3$, with the result that the Class I area would not be a part of a baseline area. Yet the cumulative impact of these sources could be greater than the 1 $\mu g/m^3$ increment for particulate matter for Class I areas, so that deterioration of air quality greater than that allowed by the regulation could legally occur.

(4) The use of the entire state as an SO_2 baseline area provides maximum protection for all Class I areas in the state. This is of particular concern to the Commission, since the general flow of air from west to east and the long-range transport of gaseous pollutants can result in effects on nearly all of Colorado's Class I areas by SO_2 sources on the West Slope. The effects and extent of acid deposition, to which SO_2 is a major contributor, was a topic of extensive testimony at the hearings; the definition of the entire state as a baseline area for SO_2 affords maximum protection of the environment while the problem of acid deposition receives additional study.

DEFINITION OF “BASELINE CONCENTRATION”

Two parties proposed changes to this definition, both suggesting the substitution of “allowable” for “actual” emissions in portions of the definition. The concern regarding power plant actual versus allowable emissions is discussed under “Actual Emissions,” above.

The other concern arises from the possibility of a large difference between actual and allowable emissions in the calculation of increment consumption or in establishing baseline concentrations. This is discussed extensively in the EPA preamble to the August 7, 1980 PSD regulations (Division Exhibit B, pp. 74-76) concerning increment consumption. EPA's rationale is that actual emissions more reasonably represent actual air quality than allowable emissions and that because actual emissions are based on at least two years of operation, future emissions could be reasonably expected to remain at the same level. EPA therefore uses actual emissions to avoid “paper consumption” of increment (or modeled baseline concentrations which would exceed monitored levels) The Commission concurs with the EPA rationale and has adopted the EPA approach of using actual emissions to track increment consumption and determine baseline concentrations.

DEFINITION OF “COMPLETE”

The Environmental Defense Fund (EDF) proposed a list of specific elements of a PSD permit application, for aid in determining whether an application is “complete,” which was generally incorporated in the final rule. The proposed list of items would add some certainty and clarification for the applicant and the Division of the specific items required to demonstrate completeness of an application. Regarding items (i) and (iii)-(iv), opposition to the list by several parties was primarily that it was redundant with other requirements of the rules. York, Nov. 10 Tr. at 18 et seq. and 60 et seq. Item (ii) was retained because, for many or most applications, such information would be necessary to verify the applicant's modeling.

DEFINITION OF “NET EMISSIONS INCREASE”

Several parties proposed crediting increases or decreases in emissions that occur up to five years after a modification becomes operational. The Commission did not adopt this recommendation because EPA specifically prohibits states from crediting decreases, which would occur after the change occurs. 40 CFR 51.24(b)(3). In addition, it would prove difficult to exact an enforceable agreement for a source to close down or otherwise decrease emissions at some future date.

Several parties proposed in paragraph f(ii) to shift “enforceable” from time of construction to time of operation. This change would not be consistent with the state statutory requirements, which prohibit construction or operation of a non-permitted new source or modification. The suggested change would also needlessly complicate the correlation of permits to enforceable decreases in emissions.

In response to a party comment that 90 days to report a reduction in emissions is too short, the Commission agreed and has allowed such reports to be made within a year of the decrease unless an extension is granted. A longer time would make the reduction difficult to verify.

DEFINITION OF “SECONDARY EMISSIONS”

The final definition incorporates a recent amendment by EPA, 47 Fed. Reg. 27554 (June 25, 1982) and is consistent with CRS 1973, 25-7-202(6.5).

DEFINITION OF “ALLOWABLE EMISSIONS”

In several sections of EPA's PSD rules, including its definition of “allowable emissions,” EPA grants credit for permit conditions only if they are “federally enforceable.” In each of such sections, the Commission has deleted the qualification of “federally” and has in the Common Provisions Regulation defined “enforceable” so that it is consistent with EPA's definition of “federally enforceable.”

DEFINITION OF “SIGNIFICANT”

Several parties commented that the proposed definition, which defined both “significant” and “significantly” and included a listing of “significant concentrations,” was confusing and unnecessary. The proposed definition also gave the Division the discretion to (1) determine that certain sources were not significant even if the source met the definition, and (2) to determine significance levels for non-listed pollutants. In addition, it limited the definition for sources affecting Class I areas to those sources producing a “significant” impact. There were several sections in the proposed regulations that used the “significant” definition of ambient concentrations to allow impacts to Class I areas not allowed under EPA rules. EPA and the National Park Service commented that these changes resulted in a less stringent definition. The Commission agreed with these comments. The final definition is essentially identical to EPA's and uses only emission rates to define “significant,” and the use of “significant” to qualify impacts to Class I areas in other sections of the rules has been deleted.

DEFINITION OF “MODIFICATION”

One party proposed that an existing exception for increases in SO_2 emissions caused by adding new emission control equipment (e.g., replacing scrubbers with fabric filters) be retained. The Commission acknowledges that this exemption was intended to avoid penalizing a source willing to improve particulate matter collection by converting from scrubbers to baghouses or electrostatic precipitators. Since scrubbers collect gaseous pollutants, but baghouses and precipitators do not, the amount of SO_2 emitted would increase, hence the exemption. Since there are a number of nonattainment areas for particulate matter, but none for SO_2, the Commission will continue to encourage additional control of particulate matter by including this exemption in the definition of “modification.”

It should, however, be noted that this exemption is not included in the definition of “major modification,” so a significant increase in SO_2 emissions from a major source will result in PSD applicability. The effect of this is to provide the exemption only for minor sources and minor modifications.

DEFINITION OF “STATIONARY SOURCE”

The proposed definition was revised to include language essentially identical to that of EPA at 40 CFR 51.24(b)(5) and (b)(6). The final rule allows more discretion to define stationary source on a case-by-case basis. The definition clarifies that a source in a nonattainment area may also be “an identifiable piece of process equipment” which makes it consistent with a recent federal case. See Natural Resources Defense Council et al. v. Gorsuch, et al., 685 F.2d 718 (D.C. Cir. 1982).

DEFINITION OF “FUGITIVE DUST”

The State Act exempts “fugitive dust” from regulation under the PSD program, including exemption from determinations of whether a source or modification is major and of increment consumption. C.R.S. 1973, 25-7-202(4), -202(5), -204(1)(b), and -204(2)(c). “Fugitive Dust” is defined as:

> Soil or other airborne particulate matter (excluding particulates produced directly during combustion) resulting from natural forces or from surface use or disturbance, including, but not limited to, all dust from wind erosion of exposed surfaces or storage piles and from agriculture, construction, forestry, unpaved roads, mining, exploration, or similar activities in which earth is either moved, stored, transported, or redistributed; except that fugitive dust shall not include any fraction of such soil or other airborne particulate matter which is of a size or substance to adversely affect public health or welfare.

C.R.S. 1973, 25-7-202(3). Under such definition, fugitive particulates are regulated in the PSD program if they are “of a size or substance to adversely affect public health or welfare.”

The exemption of “fugitive dust” is an issue because EPA counts total suspended particulates (“TSP”) in determining increment consumption, maintenance of primary and secondary NAAQS, and source applicability. Therefore, to the extent that the state excludes some sizes of particulate matter in these determinations, its regulations are arguably less stringent than EPA's, although as explained below, because of depositional effects, there is generally an insignificant difference between the counting of TSP and the counting of smaller particulates. The basis for setting the primary NAAQS is health effects; the basis for setting the secondary NAAQS is welfare effects. These are also the bases under the State Act for counting fugitive particulates in the PSD program. Because the bases for the State's inclusion of fugitive particulates and for EPA's promulgation of particulate matter NAAQS are essentially identical, it is appropriate to consider whether the NAAQS should be the standard for determining which particulates are “of a size or substance to adversely affect public health or welfare.”

However, EPA's current primary and secondary NAAQS for particulates are based on the “Air Quality Criteria for Particulate Matter” (1969), Div. Ex. R., which has generally been superseded by more recent research and analysis. For that reason, EPA in the CMA v. EPA Settlement Agreement has agreed in the near future to promulgate new primary, and perhaps secondary, NAAQS for particulates which would exclude particulates above a size posing no health or welfare risks.

EPA's staff review, in anticipation of revisions to the particulate matter definition and NAAQS, of the effects of particulate matter on health concludes that the size counted should be less than 10 um, which includes those particles capable of penetrating the thoracic regions. “Review of the National Ambient Air Quality Standards for Particulate Matter: Assessment of Scientific and Technical Information,” EPA 450/5-82-001 (January 1982).

EPA staff review of welfare impacts indicates that visibility impacts are generally caused by fine particulates of less than 2.5 um. Id. at 122. However, such review recognizes that “the full size range of particles including dustfall can contribute to soiling, become a nuisance and result in increased cost and decreased enjoyment of the environment.” Id. at 140. Further, the EPA “staff recommends consideration of the economic and other effects associated with soiling and nuisance when determining whether a secondary standard for TP or for TSP or other large particle indicator is desirable,” id. at 141, and that “the basis for selecting a particular level for a secondary TP or TSP standard is a matter of judgment.” (emphasis added) Id. at 147. The EPA staff review indicates that EPA will probably propose a fine particulate secondary standard but is undecided as to whether to establish a TSP or large particulate secondary standard, and that there is a basis for concluding that welfare impacts are being caused by all sizes of particulates. Additionally, there was public and party testimony on welfare effects from fugitive particulates, some of which can be assumed to be large particles. See Markey, November 10 Tr. at 2 et seq.

One of the apparent concerns of parties and persons opposing the use by the Commission of TSP as a welfare standard is that the increment would be consumed and that no further development could occur. Division Exhibit W, which compares the modeled ambient impacts of TSP using a deposition model with particulates of 10 um or less using the same model, shows that the larger particles deposit quickly and that the ambient impact is relatively the same at a distance of 1000 meters or greater. The implication of this is that for many sources the modeling of increment consumption would have the same general results whether TSP is counted or whether only particles 10 um or less are counted (assuming the boundary of the source is 1000 meters or farther from the emissions point). Another implication is that welfare impacts from large particulates can only result within relatively short distances of a source.

Another concern was that the legislative intent was not to count TSP, although there was not clear evidence of legislative intent presented to the Commission. In any event, statutory language leaves the determination to the Commission to decide what particulates are of a size or substance to adversely affect health or welfare.

Given the foregoing considerations and the Commission's general interest in interpreting health and welfare effects of particulates consistent with EPA, but also given the uncertainty surrounding the revision of the particulate NAAQS by EPA, the Commission determines that in applying the definition of “fugitive dust”, the adverse effects on health or welfare of fugitive particulate emissions should be determined individually for each source. Adverse welfare effects of nuisance and soiling will be presumed to occur if the source would have offsite, ambient, particulate impacts unless the permit applicant rebuts such presumption with clear and convincing evidence. The result of this presumption will be that in most cases, large particulates will be counted and there will be no difference between EPA's treatment of particulates and the state's.

Other health and welfare effects shall generally be evaluated based on EPA's most recent research and analysis, but the permit applicant shall have the burden of proof of demonstrating with clear and convincing evidence that, if any, sizes or substances of fugitive particulates do not adversely affect health or welfare. This presumption of health and welfare effects has been incorporated in the definitions of "major stationary source" and "major modification," Section XI.A.4 on Exclusions from Increment Consumption, and Section V.D.3.c.(i)(B).

Upon EPA's adoption of revised NAAQS for particulates, the Commission may consider whether to revise this Statement of Basis and Purpose or the definition of "fugitive dust" to reflect such revisions. Should EPA decide not to have a secondary NAAQS incorporating nuisance and soiling (welfare) impacts of large particulates, the Commission will consider whether the welfare effects of large particulates are significant enough to be included, or whether they are relatively insignificant and, thus, should not be counted in the state PSD Program.

DEFINITION OF "MAJOR SOURCE" AND "MAJOR MODIFICATION"

The State Act permits the counting of fugitive emissions in determining whether a source or modification is major "only if the Commission adopts regulations to include fugitive emissions for that source category." CRS 1973, 25-7-202(4) and (5). The Federal Clean Air Act has a similar requirement at Sec. 302(j). EPA has interpreted the rulemaking requirement to mean simply a consideration in rulemaking of whether fugitive emissions should be counted and a requirement that affected industries be allowed to present policy or factual reasons why fugitive emissions should not be counted. 45 Fed. Reg. 52676 (August 7, 1980). Based on this rationale, EPA's rules currently list 26 categories of sources for which fugitive emissions are counted. A similar interpretation of the State Act is reasonable and has been adopted by the Commission.

One party recommended the addition of uranium mills and coalmines to the list of sources for which fugitive emissions would be counted. However, those sources could not be considered in this proceeding due to inadequate public notice. The Commission intends to consider those sources for listing as soon as practicable.

In the CMA v. EPA Settlement Agreement, the EPA has agreed to remove these 26 listed sources on the basis of industry's argument that the rulemaking requirement means that EPA must identify reasonable methods for measuring and modeling fugitive emissions from a category of sources. Although not agreeing that this is legally required under state or Federal law, the Commission has determined that Division Exhibit F, primarily, makes that demonstration for the ten categories located or expected to locate in Colorado.

It should be noted that measurement methods are not only available, but have been in use for a number of years and have provided test results that are the basis for the fugitive emission factors used by EPA and other control agencies, including the Colorado Air Pollution Control Division.

The following important parallels between stack emission factors and fugitive emission factors support the conclusion that fugitive emission factors are relatively as reliable and as reasonably available as stack emission factors:

- Both are based on numerous test data at different locations on different equipment or operations.
- Both are influenced by many variables (e.g., for a stack, flow rate, temperature, process variations; for a fugitive plume, wind speed, moisture content of the material, size distribution of the material).

- Neither is intended to represent actual emissions from a specific source. Actual acceptable test data for a specific or similar source would always be used in lieu of an emission factor.

- Both are intended as air management tools to allow pre-construction assessment of a source impact or as a representative value to average total emissions from a number of similar sources (e.g., all waste incinerators, commercial boilers, or coal storage piles) for such air quality management purposes as determining “reasonable further progress” in nonattainment areas.

Stack and fugitive emission factors are both estimates; such factors are nevertheless widely used by control agencies and applicants alike. However, control agencies generally have no objection to, and would prefer, actual test data in lieu of factors whenever such information is submitted. (See Testimony of McCutchen, October 28, 1982; Egley, November 18, 1982, pp. 72-75 and p. 99; Bertolin, October 29, (am), p.39.)

One party's concern involved whether the emission factors for a facility can be extrapolated to a larger facility, specifically, from a 7000 ton per day oil shale processing facility to a 50,000 ton per day facility. Scale-up is a widely used and accepted approach throughout industry for estimating the feasibility of larger-scale facilities from results at smaller-scale facilities. There are a number of well-known precautions that should always be considered when extrapolating, and a control agency should be at least as cautious in extrapolating emission levels as the applicant is in extrapolating process data. Of course, if different equipment, such as a retort, is to be used at a proposed facility, an emission estimate would be based on mining and handling practices and on different processing equipment emission factors (e.g., refinery emission factors) which are similar to oil shale processing activities where such would be more accurate than extrapolation. Therefore, either through extrapolation or through the application of other more applicable and available emissions factors, relatively accurate emissions levels from all types of oil shale facilities can be calculated.

The same modeling techniques used to model stack emissions can be and are used to model fugitive emissions. Division Appendix F. One modeling parameter, deposition, is more critical in modeling fugitive particulate emissions and should be carefully evaluated. Fugitive particulate emissions usually contain more large particles than do controlled stack emissions. These large particles generally settle out rapidly, so that the impact at a plant boundary is usually much less than would be anticipated by the quantity of emissions at the source. See “Fugitive Dust.” However, acceptable models exist which incorporate deposition and thereby provide a reasonably accurate assessment of fugitive particulate emission impact. Models without deposition can be used for gaseous and fine particulate fugitive emissions. Models have recognized limitations, but they are as accurate for fugitive emissions as for stack emissions.

The following information, which is primarily from Division Exhibit F, concerns the major policy and factual reasons for counting fugitive emissions from each of ten source categories:

Coal Cleaning. A typical plant would process 10,000 tons per year (TPY) of coal and emit approximately 280 TPY of particulate matter, 96% of which would be fugitive emissions. Over 100 TPY of the fugitive emissions are less than 15 microns in diameter and are considered inhalable particulate (IP).

Portland Cement. The typical plant produces 500,000 TPY of cement and emits approximately 370 TPY of particulate matter, 60% of which would be fugitive emissions.

Iron amp; Steel Mills (Including Coke Ovens). A typical plant would produce several million tons of steel per year and emit approximately 3,600 TPY of particulate matter, 64% of which would be fugitive emissions. The coke plant would produce over half a million tons of coke per year and emit approximately 700 TPY of particulate matter, 10% of which would be fugitive emissions, and 1,500 TPY of uncontrolled fugitive hydrocarbon emissions.

Petroleum Refineries. A typical plant would process 25,000 barrels of oil per day and emit approximately 1,100 TPY of hydrocarbons, 57% of which would be fugitive emissions.

Lime Plants. A typical plant would produce 300,000 TPY of lime and emit approximately 1,800 TPY of particulate matter, 33% of which would be fugitive emissions.

Fuel Conversion. A typical shale oil plant would produce 50,000 barrels per day of oil and emit 4,800 TPY of particulate matter, 12% (500 TPY) of which would be fugitive emissions, and 8,611 TPY of hydrocarbons, 12% (1,080 TPY) of which would be fugitive emissions.

Sintering Plants. A typical plant would emit approximately 400 TPY of particulate matter, 20% (80 TPY) of which would be fugitive emissions.

Power Plants and Boilers. A typical, but well-controlled, new 500 MW power plant burns 2.1 million TPY of coal and emits approximately 620 TPY of particulate matter, 18% (110 TPY) of which would be fugitive emissions. These fugitive emissions are from coal handling and storage, among the most visible and complaint-related of all fugitive emission sources.

Petroleum Transfer and Storage. A typical plant has a capacity of 476,000 barrels and an annual throughput of 7,123,000 barrels per year and emits 267 TPY of hydrocarbons, 72% of which are fugitive emissions.

In conclusion, the Commission has determined that fugitive emissions from the above sources should be included in determining whether the source or modification is major for the following general reasons:

(a) Fugitive emissions consist of the same pollutants that are emitted through stacks and regulated as stack emissions;

(b) The quantity of fugitive emissions, both in absolute and in relative terms, is significant; and

(c) Although this finding is not legally required, there are methods reasonably available for measuring and modeling fugitive emissions.

PUBLIC COMMENT AND HEARING REQUIREMENTS

The Commission has adopted a regulation designed to offer maximum opportunity for any interested person to learn about, and become involved in, the PSD permit review process. Adopted in the final rule are proposals by one party that (a) the public notice be printed not only in a newspaper of local distribution, but also in one of state-wide distribution to increase the number of potential interested persons reached by the notice, (b) that the public hearing be held at least 60 days after the Federal Land Manager (FLM) has received the notice and permit application, to allow the FLM adequate response time, and (c) that any interested person receive notice of public hearing. In addition, the Commission agrees with the Division proposal to implement and maintain an “interested party” mailing list as described in Division Exhibit M.

The proposed rule contained a requirement that the Division notify the county Commissioners in affected counties when a proposed source would consume 50 percent or more of the remaining PSD increment. Two parties proposed that this requirement be deleted as allowing local land use decision-makers to unduly influence air permit decisions.

The intent of this requirement, which has been modified to notify county Commissioners of any PSD permit applications, is not to provide opportunity for counties to comment to the Division on land use; rather, it is to provide information to the counties on proposed sources so that the counties can more adequately assess their priorities and needs. PSD permit approval or denial is to be based solely on the criteria specified in this regulation; land use decisions are, and will remain, the responsibility of local governments.

Regarding the issue of land use decisions, one party commented that Section IV.C.4.e(iii) of this final rule, which solicits comments from interested parties on alternatives to a proposed PSD source or modification, constitutes the inclusion of land use factors in permit approval determinations. The Commission did not remove this section because it is required by the State Act, CRS 1973, 25-7-114(4)(f)(1)(B). Furthermore, the intent of soliciting such alternatives is for the assessment of alternatives with respect to control technology and source impact, not land use.

CONTROL TECHNOLOGY REVIEW

One party proposed that the last sentence in Section IV.D.3.a.(i)(C), which requires the owner or operator of a phased project to demonstrate the adequacy of a previous best available control technology (BACT) determination, be deleted. The Commission did not delete this sentence because (1) an EPA regulation requires such a condition and deletion of this requirement could be considered less stringent, and (2) the requirement is intended to provide for the possibility of a different BACT determination if new technology has developed between the time of permit review and the next phase of a project for which construction has not yet commenced, a time period which can easily exceed five years on large projects.

POST-CONSTRUCTION MONITORING

Five parties proposed that post-construction monitoring requirements be limited to a maximum of one year. The Commission recognizes the concern of lessening the burdens on owners or operators, particularly if the information being gathered is unnecessary. However, in many cases, there can be a very real need for monitoring for periods of time greater than a year to obtain reliable data. Accordingly, the final rule requires post-construction ambient monitoring for a period up to one year; additional ambient monitoring can be required only if it is necessary to determine the effect of emissions from the source on air quality. This necessitates an evaluation by the Division regarding the adequacy of the data, and a showing by the Division that additional monitoring is needed, before more than a year of monitoring could be required.

OPERATION OF MONITORING STATIONS

Three parties proposed that the rule be written to allow the latest changes in EPA-approved methods to be used without first having to amend the rule. The Commission agrees with the need to use the most up-to-date approved methods. Accordingly, the final rule specifies that “EPA accepted procedures....as approved by the Division” can be used.

ADDITIONAL IMPACT ANALYSIS

Section IV.D.3.a.(vi) of the final rule requires an owner or operator of a proposed PSD source to provide an analysis of the impairment to water that would occur as a result of emissions associated with the source.

This analysis is not required by the EPA rules. The inclusion of water in the additional impact analysis reflects a strong concern by the Commission based in the record regarding acid deposition. At this time, there is neither the information nor the evidence of damage to justify regulating acid deposition in Colorado. However, the vulnerability of high altitude lakes to acid deposition and the potential increases in acid-forming pollutants such as SO2 and NOx on the Western Slope from sources subject to the PSD program, particularly oil shale processing and large power plants, clearly demonstrate a need for a program to gather data, track and analyze this potential environmental problem. The inclusion of water in the additional impact analysis is intended to gather information on the problem; this analysis is not intended to affect permit approval or denial or control technology review decisions except for determinations of adverse impact to AQRVs in Class I areas. The issues that have been raised concerning water impact analysis are discussed in detail below.

a. Legal Authority to Require an Impact Analysis of Acid Deposition

The State Air Quality Control Act requires a PSD permit hearing to consider “air quality impacts of the source... and other appropriate considerations.” C.R.S. 1973, 25-7-114(4)(f). Acid deposition can be construed as an indirect but potentially significant air quality impact which should be analyzed, especially in light of one of the stated purposes of the PSD Program “to protect public health and welfare from any actual or potential adverse effect which....may reasonably be anticipated to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air (emphasis added).” Section 160(1) of the Clean Air Act. Acid deposition in water is those pollutants in other media originating as emissions to the ambient air.

The Federal Land Manager (FLM) of a Class 1 area is responsible for determining whether a source has an adverse impact on air quality related values which are generally defined as follows:

Any value of an area, which may be affected by a change in air quality. Examples include flora, fauna, soil, water, visibility, culture, and odors. Forest Service Comments, October 7, 1982, p.1.

Acid deposition may adversely affect such values, and thus an analysis of its effects should be required for review by the federal land managers of affected Class I areas.

b. Major Issues

The major issues discussed during the hearings are summarized below:

1. Are Colorado's watersheds sensitive to acid deposition?

John Turk of the USGS is involved in acid deposition research in Colorado and stated that 370 lakes in the Flattops Wilderness area comprising 157 hectares would be sensitive to potentially harmful degrees of acidification if precipitation attains an average pH of 4.0. (Exhibit 3, Nov. 10 Tr. at 153)

Ben Parkhurst maintains that there is talk of Colorado's lakes being sensitive (Oct. 29 Tr. at 146), but states that sensitivity must be considered together with acid inputs. Thus, if acid input to the water system is not sufficiently large the sensitivity question is not important.

Dr. William Lewis stated that Colorado's lakes are sensitive to acid deposition as demonstrated by the measured loss in buffering capacity he found in his studies. (Nov. 18 Tr. at 136-138)

In conclusion, it can be inferred that some Colorado lakes are poorly buffered and if sufficient levels of acidity are introduced into the lakes, these poorly buffered "sensitive" lakes could develop acidification problems.

2. Has acidification occurred in any Colorado lakes?

John Turk of the USGS states that there has not been any large degree of acidification taking place in the lakes or streams he has studied in the Flattops. (Nov. 10 Tr. at 172)

Ben Parkhurst also states that there is no evidence to show that any acidification has taken place in Colorado Lakes. (Oct. 29 Tr. at 144 and 150-152)

Dr. William Lewis states that he has noted pH changes in lakes he has studied (Nov. 18 Tr. at 140), but he does not consider that to be the major point in regard to the acidification question. Lewis considers the loss of buffering capacity to be the best indicator of acidification effects on lakes and he has found statistically valid evidence to show that this has occurred. (Nov. 18 Tr. at 136-138)

In summary, there is some evidence that pH has dropped slightly in some of the lakes Lewis has studied, however, it does not appear that acidification (drop in pH) has occurred to any large degree in Colorado, however, in the prediction of future impacts, buffering capacity should be examined and this has dropped in the lakes examined by Lewis.

3. Is there a potential for acidification in the future?

Paul Ferraro has done some research on estimating potential acid deposition impacts on Colorado and has determined that under different energy development scenarios, there is a potential for acidification in sensitive lakes. (Nov. 10 Tr. at 158-159)

Parkhurst states that he would not expect acidification to be a problem in the future, unless the acid deposition reaches levels similar to those found in the Northeast. (Oct. 29 Tr. at 154-156) Parkhurst states that Ferraro's study is conservative and a pH drop to 5.8 would not affect fish.

Oppenheimer (EDF Exhibit 32 p. 6) states that if a 1 $\mu g/m^3$ increase in SO_2 (annual average) occurs, acid deposition levels could result which would be damaging to sensitive lakes.

In summary, it can be inferred that there is a potential for energy development activities to cause increased levels of acids to be deposited in the watershed, and effects on pH may occur depending on the buffering capacity of the water. The degree of the effect will depend on the amount of acid, thus the amount of emissions.

4. Are there adequate methods of modeling for acid deposition effects on watersheds?

Paul Ferraro has utilized what he refers to as a "first cut" approach in estimating impacts due to acid deposition. The approach utilizes methods employed by John Turk for determining sensitivity of waters and methods for estimating deposition rates developed by Systems Applications, Inc. (Nov. 10 Tr. at 154-176)

Oppenheimer (EDF Exhibit 32 p. 12-13) states that acid deposition modeling could be conducted using presently available plume models (approved by EPA), which incorporate a plume depletion function to account for deposition. Results from this model could then be compared to deposition standards.

In summary, there appear to be only screening techniques available at this time for estimating the impacts of acid deposition.

5. What level of acidification is dangerous to aquatic ecosystems?

Parkhurst stated that fish could survive in pH's as low as 4.1. (Oct. 29 Tr. 143)

Lewis states that he feels that trout would be adversely impacted if pH dropped significantly below six as an average. He would not expect trout populations to be able to reproduce and grow at a pH below six. (Nov. 18 Tr. at 152,153)

Parkhurst also states that a permanent pH decrease from 6.0 to 5.0 is not a natural variation that many species would probably be eliminated, and species numbers and diversities reduced. (Nov. 10 Tr. at 110)

Parkhurst also testified that there is not any evidence to show that trout are capable of both reproducing and maturing in an environment, which is consistently of a pH of 4.5 or less. (Nov. 10 Tr. at 114)

In conclusion, the record does not clearly identify the point at which damage to fish will occur. However, testimony indicates that below a pH of 4.5, and maybe below 6, fish populations would not be able to reproduce and mature.

Summary

Few definitive conclusions could be drawn from the evidence and testimony. The main point of agreement was that at the present time there has not been any adverse acidification identified in any of Colorado's watersheds. The buffering capacity of lakes appears to be the important factor to consider in determining sensitivity of lakes. Testimony was given that buffering capacity has diminished in certain mountain lakes; however, the cause of this loss has not been identified. No agreement was reached on what level of pH could be tolerated by aquatic ecosystems without causing adverse impact. It could be agreed by all parties that more research must be conducted on acid deposition so that its effects may be better understood and predicted by appropriate models.

Although more information is needed, studies in the Northeastern United States, Canada, and Europe show that acid deposition can be a serious problem (Oct. 29 Tr. at 144-145 and EDF Exhibit 32 p.3). Colorado contains many lakes, which are sensitive, exhibiting low buffering capacities. If energy development occurs on the Western Slope emissions of acid precursors will grow substantially, which will result in increased acid deposition levels. The nature of energy industry in Colorado may result in rapid growth in a short period of time, which will occur before all information on acid deposition is understood. If a large industry develops and new information shows that ambient air standards and increments do not protect the state from acidification problems, a valuable resource may be damaged. For these reasons, the Commission intends to remain vigilant in monitoring this problem, and as analytical capabilities is developed or a problem develops, to re-address this issue for possible regulatory and/or legislative solutions. A subcommittee should be formed, if resources permit, to develop specific guidelines for acid deposition analyses based on recent modeling innovations. In the interim, proposed PSD sources emitting acid or acid precursors will be required to analyze the impact of these emissions on water, utilizing the most up-to-date techniques available.

AREA CLASSIFICATIONS

Several parties objected to the application of Class I sulfur dioxide increments to those areas of Colorado listed in Section VIII.B. which are otherwise Class II areas. The sulfur dioxide Class I increments are required to be enforced in these areas by CRS 1973, 25-7-209. However, pursuant to CRS 1973, § 25-7-105(8) (Supp. 1982), this Section VIII.B. may not be made a part of the State Implementation Plan (SIP) until these areas are redesignated as Class I under the procedures of Section IX. Until they are redesignated, they may only be enforced under state law and regulations. However, unlike Class I areas, the increment in these areas may be protected now. See CRS 1973, 25-7-210.

The Commission has also determined that the variances from increment consumption allowed by Sections XIV.C., XIV.D., XIV.E., and XIV.F. for Class I areas should also apply to the areas listed in Section VIII.B. It is a reasonable interpretation of CRS 1973, 25-7-209 that if the Class I (sulfur dioxide) increments are to apply to such areas; the variances from the increments should also apply. There is nothing in the State Act to indicate that the areas listed in CRS 1973, 25-7-209, are to be given better air quality protection than Class I areas, which would be the result if the variances did not apply.

REDESIGNATION

Several parties objected to what were considered burdensome requirements for redesignating areas to Class I. The adopted rule incorporates only the minimal requirements for redesignation from state and federal law. See CRS 1973, 25-7-208; Sec. 164 of the Federal Clean Air Act; 40 CFR 51.24(g). However, the Commission did lessen the burden imposed by the proposed rule on those persons requesting a redesignation by allowing such requests to be made without providing all of the information necessary for a redesignation. Who would provide such information is not specified so that it could be any combination of federal, state and private entities.

TECHNICAL MODELING & MONITORING REQUIREMENTS

Several parties proposed the inclusion of future EPA amendments or guidelines in this section of the regulation, which specifies the air quality model, monitoring and stack height requirements to be used. In response, the Commission adopted the use of “EPA approved” terminology instead of references to specific documents.

Two parties proposed language making EPA or the state responsible for any needed meteorological data. The Commission did not adopt this proposal because it is the applicant's responsibility to demonstrate that it will not cause exceedance of an NAAQS or increment, and meteorological data are nearly always needed to make such determinations. If the Division has such data, it has an obligation to make that data available to the applicant.

INNOVATIVE CONTROL TECHNOLOGY

Several parties proposed that the phrase “greater than or” be deleted from Section XIII.B.2. which specifies that the innovative system achieve emission reductions “greater than or equivalent to” BACT. The EPA regulation uses the phrase “equivalent to” and the parties considered the proposed state rule more stringent. The Commission does not consider the phrase “greater than or equivalent to” (emphasis added) to be more stringent, but instead to be a clarification that an acceptable innovation can result in either equivalent or lesser emissions from the source, but not a higher level of emissions. The preamble to the EPA PSD regulation (Div. Exhibit B, p. 84) clearly specifies that the “...final emission limitation must at least represent the BACT level that would have been initially defined...”

FEDERAL CLASS I AREAS

1. (Section XIV.A.) The State's Independent Determination of Adverse Impact to Visibility

Section XIV.A. allows the Division or the Board (if applicable) to determine independently if there is an adverse impact to visibility in Class I areas if the federal land manager (FLM) fails to make such determination or such determination is in error. This authority is intended to allow the state to fulfill the FLM's responsibility for protection of visibility if for whatever reason, including political, the FLM fails to do so. The Commission recognizes that scenic vistas are an important resource of the State of Colorado. (Colorado Mountain Club Exhibit #1) A subcommittee may be formed to further develop visibility protection for the State of Colorado.

Several parties suggested problems with the state's independent authority to make such visibility determinations. These consisted of (1) measuring or predicting visibility impairment, (2) quantifying man-induced, as opposed to naturally-occurring, visibility impairment, (3) the subjectiveness of visibility impairment, (4) the lack of correlation of current particulate standards to visibility impairment, and (5) the lack of guidance in the regulation regarding determinations of significant and adverse visibility impacts.

The Commission's response to these concerns is as follows:

(1) Although it is true that there are not federal reference methods for measuring visibility at this time, there are reliable means to accurately measure and predict visibility impairment. Scientific instruments such as the telephotometer, nephelometer, and the fine particulate monitor are recognized as being capable of obtaining objective information on visibility-related parameters. Photographs are also useful in visibility assessment.

Visibility theory involving scattering and absorption of light is well documented and has been incorporated into the models described in the Workbook for Estimating Visibility Impairment (EPA-450/4-8-031). The preface to the Workbook for Estimating Visibility Impairment states: “EPA believes these techniques are at a point where the results should now be employed to assist decision-makers in their assessments.” “These techniques” include the Plu-Vu Model. Div. Ex. J at iii. Thus, these models are appropriate for use at this time.

(2) It is possible to determine if a source of visibility impairment is natural or anthropogenic through various chemical/physical analysis techniques. Improvements in air sampling and analytical techniques have made available, for the first time, detailed information on the chemical and physical nature of the ambient aerosol and of source emissions. Using these chemical “fingerprints,” particle morphology and the natural variability of air shed sources, recent developments in receptor models have provided new techniques of assigning source contributions.

(3) Perception of visibility impairment is subjective and involves individual variability; however, norms do exist around which an assessment can be made. As noted above, EPA supports the use of its Workbook for Estimating Visibility Impairment as a guide to decision makers.

(4) Particulate standards do not address visibility-related effects. It is also true that the major anthropogenic visibility impairing pollutant is fine particulate matter. Since the Class I increment for particulate is in terms of total mass concentration, rather than fine particulates, visibility impairment could occur without the increment being violated. Furthermore, the particulate increment is a maximum allowable ground level concentration; consequently, it will not protect visibility impaired by plumes at elevations above ground level. These facts form the basis for the Clean Air Act requirement that visibility should be assessed and regulated in a separate analysis. Div. Ex. S.

(5) The primary guidance for determinations of adverse impact to visibility would be the Workbook for Estimating Visibility Impairment, which has very specific guidelines.

2. (Section XIV.B.) Pre-Application and Operational Monitoring of Air Quality Related Values (AQRVs)

Section XIV.B. of the regulation allows the Division to require a source, which will have or is likely to have an impact on any Class 1 area to conduct monitoring to establish the baseline status of and impacts on AQRVs in such Class 1 areas. EPA has not imposed this requirement on applicants, although under EPA rules and the Commission rule, Section IV.D.3.(a)(vi), an Additional Impact Analysis is required which would include an analysis of impacts on AQRVs based on available data, for example, through literature searches. The data gathered from such monitoring are important and necessary in aiding the federal land manager of a Class 1 area in determining whether or not a source will cause an adverse impact on AQRVs and the state in deciding on concurrence with such determination. The data also aid the public information function of the Additional Impacts Analysis. The authority to require submission of such information includes, but is not limited to, CRS 1973, 25-7-206(2), 25-7-106(5) and (6), and 25-7-114(4).

A. National Park Service and Forest Service Testimony and Positions

The National Park Service ("NPS") and the Forest Service ("FS") supported the rule as a supplement to their current monitoring activities on the basis that the data is necessary to determining adverse impacts on AQRVs, including visibility. See Mitchell, Nov. 18 Tr. at 122 et seq., 161 et seq.; Haddow, Oct. 28 (p.m.) Tr. at 22 et seq., Nov. 10 Tr at 68 et seq.; Region 2-USDA Forest Service Comments on Proposed PSD Rule; Comments on the May 19, 1982 Proposed Colorado PSD Regulation by National Park Service Air Quality Division.

The NPS stated its willingness to provide a list of sensitive receptors of AQRVs to applicants for monitoring. Mitchell, Nov. 18 Tr. at 162.

The Forest Service recognized severe technical difficulties and high costs of monitoring some pollutants and visibility in wilderness areas. Haddow, Oct. 28 (p.m.) Tr. at 22 et seq. However, lichen monitoring could be done without great difficulty and special use permits are available for some complex monitoring. Haddow, Nov. 10 (p.m.) Tr. at 112., The FS intends to identify sensitive indicators of AQRVs for each Class 1 area, e.g. 2 or 3 species of lichen and 2 or 3 scenic views, and proposes that the state require the monitoring of such indicators Id. at 82-83.

B. Environmental Defense Fund's (EDF) and Friends of the Earth's (FOE Position

EDF's and FOE's general contentions in support of the proposed monitoring requirements were:

1. the technology for monitoring of AQRV's exist;

2. the Forest Service has identified AQRV's for wilderness areas;

3. although some monitoring is being done, most areas are not being monitored and will not be without the participation of industry;

4. decisions on adverse impacts to AQRVs cannot be made rationally without reliable scientific evidence; and

5. the state is required to have a visibility monitoring program by EPA rules, 40 CFR 51.305.

“EDF and FOE Final Recommendations; Summaries of the Record and Legal and Policy Analyses,” Section IV.

C. Trade Association Parties' Position

The Trade Association Parties' general contentions in opposition to the monitoring requirements were:

1. The Clean Air Act places the responsibility on the federal land manager to determine adverse impacts on AQRVs and, thus, the responsibility to obtain the data necessary to make such determination;

2. There is insufficient information available at this time to develop an AQRV monitoring program in that sensitive receptors for each Class 1 area have not been identified, there is no monitoring reference method available and no validated models to project impacts of particular emissions levels;

3. In some Class 1 areas monitoring is either physically impossible or inordinately expensive; and

4. The Division's discretion in specifying sensitive receptors is too vague and broad.

Trade Association Parties' Closing Argument at 31-34.

D. Commission Analysis and Decision

The above-cited testimony and evidence and other portions of the record support the conclusion that monitoring of AQRVs or sensitive receptors of AQRVs would be helpful, and in many cases necessary, to determine whether adverse impacts on AQRVs would occur. It is also evident that baseline data are not available and may never be developed by federal land managers for some AQRVs and sensitive receptors and for some Class 1 areas. Thus, the primary issue is where to place the responsibility for obtaining background data on AQRVs - the federal land manager, the state and/or the applicant.

As the Forest Service suggested, it is traditional permitting practice to require a permit applicant to obtain the data upon which the agency decides. Haddow, Nov. 10 (p.m.) Tr. at 89. This practice is consistent with the economic philosophy that companies should internalize their environmental costs. Furthermore, the Clean Air Act does not change such practice; it places the “affirmative responsibility” on federal land managers to protect AQRVs and to consider whether there will be an adverse impact on AQRVs but does not expressly state whose responsibility it is to provide necessary data upon which to exercise their responsibility.

The Commission has determined that there is available research and test methods for obtaining background data and impact data on many AQRVs that will be critical in making adverse impact determinations, even though there are not generally adopted reference methods or modeling techniques. For example, to perform a reasonably accurate visibility impairment analysis, background data is needed. Div. Ex. J. Although there are no generally accepted reference methods for estimating visibility impacts, methods for estimating visibility impairment have been developed and are relatively sophisticated. See Div. Ex. J.; Geier, Oct. 28 (a.m.) Tr. at 62-71. The rule recognizes this potential limitation on monitoring AQRVs by only allowing monitoring if "monitoring methods are reasonably available and research and development of monitoring methods are unnecessary."

In response to the objection that the Division's discretion in selecting AQRVs for monitoring is too vague and broad, the rule provides:

1. A definition of AQRVs (in the Common Provisions Regulation);

2. That the Division will consult with the federal land manager in the selection of AQRVs; and

3. That the AQRVs selected must be important to the affected Class I area and there must be cause to believe that monitoring of the AQRVs will provide a basis for evaluating effects to the AQRVs.

In response to the objection that the monitoring of AQRVs may not be economically reasonable, the rule provides that:

1. no duplication of monitoring may be required;

2. not more than 3 AQRVs may be required to be monitored;

3. monitoring methods must be reasonably available;

4. monitoring may only be required if the source is a major contributor to the expected effects on the AQRV; and

5. it is economically reasonable as compared to other monitoring and analysis expenses required of a PSD permit applicant.

SULFUR DIOXIDE AMBIENT AIR STANDARDS FOR THE STATE OF COLORADO

The proposed rule would have revised the Colorado ambient air quality standard for sulfur dioxide to be consistent with the federal standard. Because the Colorado standard is not enforceable in the permitting process, see CRS 1973, 25-7-114(4)(g), the Commission ordered on November 10, 1982 that revisions of the state ambient air quality standard for SO_2 be removed as a subject of this rulemaking.

The Commission agreed to reconsider the state standard if and when it becomes enforceable.

PUBLIC ACCESS TO CONFIDENTIAL INFORMATION

One party raised the issue of whether Section VII. of Regulation Number 3 improperly restricts access to confidential information, which would be available under the Federal Clean Air Act. Section VII. may not be considered for amendment in this rulemaking due to lack of public notice.

V.E. Adopted December 21, 1995 - Negligibly Reactive Volatile Organic Compounds

December 21, 1995 (Definitions for Negligibly Reactive VOC and Net emission increase *h*.)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, § 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act, § 25-7-110.5, C.R.S.

Basis

Regulations 3, 7 and the Common Provisions establish lists of Negligibly Reactive Volatile Organic Compounds (NRVOCs). The revisions adopted consolidate the list of NRVOCs into the Common Provisions, assuring that the same list of NRVOCs apply to all the Colorado Regulations. This provides more consistency in those chemicals regulated as VOCs.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act provides the authority for the Colorado Air Quality Control Commission to adopt and modify Regulations pertaining to organic solvents and photochemical substances. §§ 25-7-109(2)(f) and 25-7-109(2)(g), C.R.S., grant the Commission the authority to promulgate regulations pertaining to Organic solvents and photochemical substances. The Commission's action is taken pursuant to authority granted and procedures set forth in §§ 25-7-105, 25-7-109, and 25-7-110, C.R.S.

Purpose

These revisions to Regulations Number 3, 7, and the Common Provisions are intended to clarify substances that are negligibly reactive VOCs, which are reflected in the EPA list of non-photochemically reactive VOCs. By consolidating the list (which consists of the EPA list of non-photochemically VOCs), and adopting the EPA definition by reference, a single list of negligibly reactive VOCs will apply uniformly to all Colorado Air Quality Control Commission Regulations.

This revision will also include EPA's recent addition of acetone to the negligibly reactive VOC list. The addition of acetone to the list of negligibly reactive VOC's provides additional flexibility to sources looking for an alternative to more photochemically reactive VOCs. Because the EPA has added acetone to their list of non-photochemically reactive VOCs many industries, which make and supply products to Colorado industries, are planning to substitute acetone for VOCs that are more reactive. This change in the content of products purchased by industry for use in Colorado would adversely affect industries in Colorado if acetone remains a regulated VOC in Colorado. By adopting acetone as a negligibly reactive VOC, industries will be able to take advantage of and benefit from this possible shift in product contents.

Previously written statements of the basis and purpose of this regulation and revisions have been prepared and adopted by the Commission. These written statements have been incorporated in this regulation by reference and in accord with C.R.S. 1973, 24-4-103 as amended.

V.F. Adopted November 21, 1996 - Negligibly Reactive Volatile Organic Compounds

Revisions to Regulation Numbers 3, 7, 8 and Common Provisions

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, § 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act, § 25-7-110.5, C.R.S.

Basis

Regulations 3, 7 and the Common Provisions establish lists of Negligibly Reactive Volatile Organic Compounds (NRVOCs). The revisions adopted update the list of NRVOCs so that the state list remains consistent with the federal list. Additionally, because perchloroethylene will no longer be listed as a VOC in Regulation Number 7, Section XII, *Control of VOC Emissions from Dry Cleaning Facilities using Perchloroethylene as a Solvent,* is being deleted.

Regulation Number 8 and 3 list the federal Hazardous Air Pollutants (HAPs). In the June 8, 1996 Federal Register the EPA removed Caprolactam (CAS 105-60-2) from the federal list of Hazardous Air Pollutants. The conforming changes in Regulation Number 3 Appendices B, C and D have been made to keep the list of federal HAPs in Regulation Number 3 consistent with the federal list. The list of HAPs in Regulation Number 8 has been removed and a reference to the list in Regulation Number 3 has been added.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act provides the authority for the Colorado Air Quality Control Commission to adopt and modify Regulations pertaining to organic solvents and photochemical substances. § 25-7-109(2)(f) and 25-7-109(2)(g), C.R.S., grant the Commission the authority to promulgate regulations pertaining to organic solvents and photochemical substances. §§ 25-7-105(1)(l)(b) and 25-7-109(2)(h) provide authority to adopt emission control regulations and emission control regulations relating to HAPs respectively. The Commission's action is taken pursuant to authority granted and procedures set forth in §§ 25-7-105, 25-7-109, and 25-7-110, C.R.S.

Purpose

These revisions to Regulations Number 3, 7, 8 and the Common Provisions are intended to update the state lists of NRVOCs, the Ozone SIP, and HAPs for consistency with the federal lists.

V.G. Adopted April 19, 2001 - Any Credible Evidence and NRVOCs (methyl acetate)

(Incorporation by Reference of Federal Definition of Negligibly Reactive Volatile Organic Compounds (NRVOCs and Credible Evidence Provisions)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, §§ 24-4-103(4) and (12.5), C.R.S. and the Colorado Air Pollution Prevention and Control Act, § 25-7-110.5, C.R.S.

Basis

The Reason for this revision to the Common Provisions Regulation is to correct an inadequacy in the Colorado State Implementation Plan and Section 110(a)(2)(A) and the (C) of the Clean Air Act. The Credible Evidence revisions need to be incorporated into the Colorado SIP to allow for the use of any credible evidence (ACE) for the purpose of submitting Title V compliance certifications or establishing whether a source has violated or is in violation of any emission standard contained in any regulation that has been submitted to the U.S. EPA. Failure to correct this SIP revision will result in promulgation of a Federal Implementation Plan (FIP) to correct the deficiency. In a separate action of the above-described rulemaking, the definition of Negligibly Reactive Volatile Organic Compounds (NRVOCs) included in the Common Provisions Regulation is being changed to incorporate by reference the federal Volatile Organic Compound definition at 40 CFR § 51.100(s)(1). This incorporation adds methyl acetate to the list of compounds included in the Common Provisions Regulation considered as NRVOCs and thereby exempts methyl acetate from the definition of volatile organic compounds for regulatory purposes.

Background

The credible evidence revisions are based on Section 113(a) of the federal Clean Air Act. This section authorizes the EPA to bring administrative, civil or criminal enforcement action "on the basis of any information available...." Although the Clean Air Act sets no inherent limits on the EPA's authority to use any type of information to prove a violation, some of EPA's regulations provide for specific test methods for determining compliance and have been read by some to constrain EPA's enforcement authority. In the district court case, United States v. Kaiser Steel Corp., No. CV-82-2623 IH (C.D. Cal. January 17, 1984), the court construed the language of a New Source Performance Standard, at 40 CFR § 60.11, as limiting the admissible evidence of violations of opacity standards to observations utilizing Method 9, the opacity reference method. When the EPA attempted to use expert testimony pertaining to opacity to prove the existence of violations only on those days without Method 9 test data, the court rejected the evidence and held that EPA could prove violations only on those days where the Method 9 test data was conducted. In contrast, the court in National Lime Association v. EPA, 627 F.2d 416, 446, n. 103 (D.C. Cir. 1980) specifically rejected the assertion that standards can only be supported by reference test data.

In the 1990 Clean Air Act Amendments, Congress included an enforcement title, Title VII, to enhance compliance and enforcement authorities. The amended Section 113(e)(1) provides that "in determining the amount of any penalty to be assessed," the agency shall take into consideration "the duration of a violation as established by any credible evidence (including evidence other than the applicable test method)." Legislative history for this amendment shows that Congress meant to clarify that in an enforcement action, courts are not restricted to reference test method data, but may consider any evidence of violation or compliance admissible under relevant evidentiary rules (see S. Rep. No. 228, 101st Congress, 1st Session 1, 358 (1989), reprinted in 1990 U.S. Code Cong. & Admin. News 3385, 3741.[1] Section 113(e)(1), along with Section 113(a), described above, clarify that compliance and noncompliance can be determined on the basis of any credible evidence. Subsequent to the 1990 Clean Air Act Amendments, two court cases have upheld the use of credible evidence other than the reference test method specified in the regulation. *See* Sierra Club v. Public Service Company, 894 F. Supp. 1455 (D.C. Colo. 1995), *and* Unitek Environmental Services v. Hawaiian Cement, Civ. No. 95-00723 (D. Hawaii 1996).

[1]The Senate Report stated that Section 113(e)(1) makes clear that the agency may rely upon any credible evidence of violations in pursuing alleged violations. Further, the Report explained that the amendment clarifies that courts may consider any evidence of violation or compliance admissible under the federal Rules of Evidence, and that they are not limited to consideration of evidence that is based solely on the applicable test method in the State Implementation Plan or regulation. Thus, this amendment overrules the ruling in United States v. Kaiser Steel Corp. (citation omitted) to the extent the court in that case excluded the consideration of such evidence. (Senate Report at 358, Reprint at 3741.)

The federal credible evidence revisions, codified in 40 CFR §§ 51.212(c) and 52.33(a), require that State Implementation Plans must provide for enforceable test methods for each emission limit specified in the plan and the plan "must not preclude the use, including the exclusive use, of any credible evidence or information," for the purposes of submitting compliance certifications or establishing whether a person has violated or is in violation of any standard in the plan. The revisions provide that where information, such as non-reference emissions data, parametric data or engineering analysis is equivalent to information generated by reference test methods, it may be used to establish compliance or noncompliance.

The federal credible evidence revisions received substantial public comment from state and local air pollution control agencies, large and small industries, trade associations and environmental organizations. A summary of the public comments received the EPA's response to the comments and the final rule is contained in 62 Federal Register 8314 (Feb. 24, 1997).

Shortly after the rule became final, several trade associations brought a court action for judicial review (*see* Clean Air Act Implementation Project, *et al.*, v. Environmental Protection Agency, *et al.*), in the United States Court of Appeals for the District of Columbia. The Colorado Air Pollution Control Division held workgroup meetings with affected and interested parties to discuss incorporating the federal credible evidence revisions into the State Implementation Plan.

At the request of affected industry, the discussions were withheld until after the final court decision on appeal. The Court of Appeals issued its final decision on August 14, 1998, dismissing the petition for review and upholding the credible evidence revisions. The Court held that "there are too many imponderables." Whether credible evidence can be used to determine compliance or noncompliance must be decided on a case-by-case basis, given the universe of all possible evidence that might be considered "credible" and that application of evidence other than a specified reference test result may potentially affect some standards, but not others.

The Colorado Utilities Coalition and the Colorado Association of Commerce and Industry have requested that the Commission review and determine whether emissions standards in Colorado regulations were established in reliance on specific reference test methods and whether incorporating the credible evidence revisions into the Common Provisions Regulation will alter the stringency of any of Colorado's regulations. These are some of the same questions put before the Court of Appeals for the District of Columbia in the Clean Air Act Implementation Project case described above, and that the court refused to answer because of the many imponderables presented.

There are over 130-reference test methods described in the federal and Colorado regulations. Reliance on credible evidence other than a reference test may potentially affect some standards, but not others. Added to this is the fact that "credible evidence" is not a finite evidentiary set - the Commission cannot conceive of all possible evidence that might be considered credible. There are some emissions standards included in State Implementation Plans, such as the grain loading particulate matter standards contained in Colorado Regulation Number 1, that were established without consideration of the "back half" or condensable portion of the particulate matter emissions. In this situation, reliance on evidence showing noncompliance with particulate matter standards through test methods, AP-42 factors, or other engineering analysis that considers the condensable portion of the particulate matter emissions will render compliance with Regulation Number 1 emission limitations more stringent.

On the other hand, it is not possible to conceive of all the evidence that may be credible in determining whether a source is in compliance with the "front half" particulate matter emission standards in Regulation Number 1, other than the through the use of reference Test Method 5. In all cases, the proponent of evidence other than the reference test method, whether for purposes of demonstrating compliance or noncompliance in an enforcement action or challenging a permit concerning demonstrations of ongoing compliance for compliance certifications, bears the burden of demonstrating that the evidence is credible and consistent with compliance demonstrations through use of the relevant performance or reference test method. The Colorado Rules of Evidence will guide the Commission's determinations of whether evidence is credible, i.e., technically relevant and legally admissible in an adjudicatory matter before the Commission.

With respect to the methyl acetate incorporation by reference, in April 1998, the EPA modified 40 CFR Section 51.100(s)(1) to add methyl acetate to the list of compounds having negligible photochemical reactivity and exempting it from the definition of volatile organic compounds (63 Federal Register 17331, April 9, 1998). The EPA found that methyl acetate had photochemical reactivity comparable to or less than that of ethane, both on a per gram and per mole basis.

Ethane has been on the list of compounds having negligible photochemical reactivity since 1977. By incorporating the federal list of compounds included in 63 Federal Register 17331 (April 9, 1998) into 40 CFR § 51.100(s)(1), Colorado's Negligibly reactive VOCs definition conforms to the federal list.

Authority

The Colorado Air Pollution Prevention and Control Act, § 25-7-105(a)(I), provides that the Colorado State Implementation Plan meet all requirements of the federal Clean Air Act. The authority to promulgate rules and regulations to assure conformity with federal Clean Air Act requirements is given to the Colorado Air Quality Control Commission under § 25-7-105. § 25-7-105(IV)(12), in particular, provides the authority for the Commission to adopt rules consistent with the federal Clean Air Act Title V minimum elements of a permit program.

Purpose

The specific purpose of incorporating the ACE revisions into the Common Provisions is to make the Colorado SIP consistent with the federal Clean Air Act requirements and avoid promulgation of a FIP. The incorporation by reference of the current federal definition of compounds having negligible photochemical reactivity also makes the Colorado SIP consistent with the federal Clean Air Act requirements.

Federal Requirements

The rule revisions are required by Section 110(k)(5) of the federal Clean Air Act, 42 U.S.C. §7410(k)(5) that finds the SIP inadequate to comply with Sections 110(a)(2)(A) and (C) of the Clean Air Act, 42 U.S.C. §§7410(a)(2)(A) and (C), because the Colorado SIP may be interpreted to limit the types of credible evidence or information that may be used for determining compliance and establishing violations. Neither the rule nor the incorporation by reference exceed or differ from federal requirements.

V.H. Adopted August 16, 2001 - Affirmative Defense

Revisions to Common Provisions Regulation

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, §§ 24-4-103(4) and (12.5), C.R.S. for and the Colorado Air Pollution Prevention and Control Act, § 25-7-110.5, C.R.S.

Statutory Authority

The Colorado Air Pollution Prevention and Control Act, § 25-7-109, C.R.S., provides the Commission the authority to adopt and revise rules and regulations that are consistent with state policy regarding air pollution and with federal recommendations and requirements. § 25-7-105(1), C.R.S., grants the Commission the authority to promulgate rules necessary to implement and administer the Colorado Air Pollution Prevention and Control Act. § 25-7-106(1), C.R.S., grants the Commission maximum flexibility in developing an effective air quality control program. § 25-7-105(1), C.R.S., provides the authority for the Commission to make state implementation plan revisions.

Basis

The reason for this revision to the Common Provisions regulation is to provide appropriate relief, in terms of an affirmative defense to civil penalties, for sources that experience excess emissions during startup, and shutdown events, despite their best efforts to comply with applicable emission standards. In general, startup and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the planning, design and implementation of operating procedures for the process and control equipment. Accordingly, it is reasonable to expect that careful and prudent planning, design and operation will eliminate violations of emission limitations during such periods.

For some source categories, given the types of control technologies available, there may exist short periods of emissions during startup and shutdown when, despite best efforts regarding planning, design and operating procedures, the otherwise applicable emission limitation cannot be met. The Affirmative Defense for Excess Emissions During Startup and Shutdown revisions to the Common Provisions regulation recognize this fact. Although all excess emissions arising during startup and shutdown must be treated as violations under this rule, an affirmative defense may be available to a source that will shield it from civil penalty liability if the owner/operator meets the requirements of the rule. In making affirmative defense determinations, it is the intent of the Air Quality Control Commission to allow the use of all sources of information, including any credible evidence, the affirmative defense criteria, physical inspection of the facility and review of documentation pertaining to maintenance and operation of process and air pollution control equipment to determine whether the owner/operator proved the relevant factors under this rule. The affirmative defense provision is not available for claims for injunctive relief.

The Commission established several requirements that an owner/operator must prove in order to avail itself of an affirmative defense to civil penalties. These requirements must be evaluated on a case-by-case basis according to the type of source as well as the nature of the cause of any excess emissions. For example, paragraph D requires that an owner/operator demonstrate that it minimized the frequency and duration of operation in startup and shutdown periods to the maximum extent practicable. In general, emission standards applicable to a source category are based on the type of operation, so excess emissions must be evaluated in light of the cause and its relation to the standard. On the other hand, sources naturally have differences in the frequency and duration of shutdown and startup cycles and this fact must be included in any affirmative defense evaluation.

This revision specifically refers in factor E. to minimizing the impact on ambient air quality. The Commission believes that every effort should be made to avoid adverse air quality impacts, even though the ambient air may be better than established minimum standards. Whether some step is possible should take into account the relative cost of the step and the time to implement it in relation to the amount or duration of excess emissions that would be avoided.

The Commission initially proposed including off-line maintenance periods between shutdown and startup in this affirmative defense provision. The Commission chose not to provide an affirmative defense for off-line maintenance periods, but to rely on the enforcement discretion of the Air Pollution Control Division to address excess emissions during these periods. The Commission recognizes that during off-line maintenance at coal-fired electric utility boilers, infrequent, short-term periods of excess opacity readings may occur despite the use of good air pollution control practices. Other types of sources may experience similar occurrences. The Commission anticipates that, in evaluating its enforcement options and penalty determinations regarding excess emissions during off-line maintenance periods, the Division will consider factors similar to those in this rule for shutdown and startup periods. In particular, factors B., E. and H. will be important in determining the appropriate response to a source's excess emissions. The Division should also consider whether the owner/operator used available scheduling options to minimize the impact of potential excess emissions on ambient air quality.

The Commission decided to allow use of an affirmative defense only for violations of performance standards or emission limitations with an averaging time of twenty-four hours or less. Sources subject to standards or limitations with longer averaging times should be able to meet those requirements in spite of excess emissions during periods of startup or shutdown. Restricting the affirmative defense rule in this way should help to assure that excess emissions from a single source or small group of sources do not cause an exceedance of ambient air quality standards or Prevention of Significant Deterioration (PSD) increments.

Purpose

The specific purpose of incorporating the Affirmative Defense revisions into the Common Provisions is to make the Colorado SIP consistent with the federal EPA's Policy Regarding Excess Emissions During Malfunction, Startup and Shutdown dated September 20, 1999.

Federal Requirements

The rule revisions are not required by the federal Clean Air Act but, to the extent states wish to obtain EPA approval of a state implementation plan revision to provide relief for excess emissions that occur during startup and shutdown events, the rule revisions must be consistent with EPA's policy dated September 20, 1999.

V.I. Adopted July 18, 2002 - General Cleanup and Clarifying Changes

Revisions to Common Provisions Regulation

This Statement of Basis, Specific Statutory Authority and Purpose comply with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103(4) and (12.5), C.R.S., for new and revised regulations.

Basis

The Common Provisions Regulation is designed to assist in the implementation of more substantive regulatory programs authorized under the Colorado Air Pollution Prevention and Control Act (“Act”) including provisions of the State Implementation Plan addressed in §, 25-7-105(1)(a), C.R.S., emission control regulations addressed in §, 25-7-105(1)(b), C.R.S., and prevention of significant deterioration requirements addressed in §, 25-7-105(1)(c), C.R.S., as well as other authorized programs under the Act. The current revisions have been promulgated in order to facilitate this goal. The majority of the revisions were proposed by the Air Pollution Control Division based on their internal review of the regulation and extensive discussions with interested parties regarding shortcomings of the regulation. The Division's initial proposals were addressed at length during a subcommittee process involving the Commission, the Division, stakeholders and other interested parties. During this process, participants commented on the initial proposal and offered additional suggestions. The proposal presented to the Commission is a collaborative effort of the Division and interested stakeholders.

Specific Statutory Authority

The specific statutory authority for these revisions is set forth in §, 25-7-105(1), C.R.S., which gives the Air Quality Control Commission authority to promulgate rules and regulations necessary for the proper implementation of the Air Pollution Prevention and Control Plan. Additional authority for these revisions is set forth in §, 25-7-106, C.R.S.

Purpose

A review of the Common Provisions Regulation revealed numerous grammatical, stylistic and formatting errors, language ambiguities and obsolete or duplicative provisions. These revisions are intended to cleanup, clarify and streamline the Commission's Common Provisions Regulation. The revisions are not intended to add additional requirements, delete requirements or substantively change existing requirements.

The changes reflected in the revisions to the Common Provisions Regulation fall into three categories: 1) deletion of obsolete or duplicative provisions; 2) stylistic, grammatical and formatting changes designed to improve readability of the regulation; and 3) language changes to address ambiguities and avoid unintended regulatory results.

1) Elimination of Obsolete and Duplicative Provisions

Over the years, the Common Provisions Regulation has expanded to include new definitions and other provisions intended to assist in implementing the substantive requirements set forth in other regulations. In reviewing the regulation, it was determined that many of the definitions and a few of the other requirements were either obsolete or duplicated in other regulations. For example, Section III., regarding Smoking Gasoline Powered Motor Vehicle and Section X., addressing Conflict of Interest by Commission Members were deleted from the regulation because they are duplicated in other regulations. Provisions included in Section III can be found in Commission Regulation Number 11 and Section X. of the Commission's Procedural Rules. Similarly, a number of definitions set forth in the Common Provisions are also contained in Regulation Number 3.

Because Regulation Number 3 underwent contemporaneous review, the primary focus was to eliminate duplications between the Common Provisions and Regulation Number 3. Duplicative provisions that were only applicable to Regulation Number 3 were deleted from the Common Provisions Regulation. Provisions applicable to multiple regulations remain in the Common Provisions and were deleted from Regulation Number 3. Certain duplicative definitions not related to Regulation Number 3 were also addressed. A full review of all the Commission's regulations was not undertaken during this rulemaking process. The duplicative provisions that remain in the Common Provisions Regulation will be addressed when other regulations are opened for revision.

2) Stylistic, Grammatical and Formatting Revisions

The revisions include grammatical, formatting and stylistic changes designed to make the regulation more readable. For example, reference to the “Air Quality Control Commission” in Section I.A. was changed to “Commission” and a number of parenthetical acronyms were eliminated. These changes are not designed to change applicable requirements, but rather to streamline the language of the regulation and to make the regulation stylistically consistent with other Commission regulations.

The regulation contains numerous references to the Colorado Air Quality Control Act. In 1992, the legislature changed the name of the Act to the Air Pollution Prevention and Control Act. References in the Common Provisions were revised to reflect this change. Additionally, date references to the Act and other enactments were eliminated to clarify that the references are to the current enactments and not to some outdated version. The date reference in the definition of ozone depleting compound was retained to reflect that future changes to the federal ozone depleting compound lists will need to be incorporated by reference during subsequent rulemakings.

3) Clarifying Changes

The revisions address a number of concerns that the Division and other interested parties raised during the subcommittee process regarding ambiguous provisions. For example, pursuant to Regulation Number 1, different equations exist for calculating emission limits for manufacturing process equipment and fuel burning equipment. There has been some confusion regarding which standard applied when fuel-burning equipment was used as part of a manufacturing process. The revisions to the Common Provisions Regulation change the definition of fuel burning and add a definition for manufacturing process equipment to clarify that fuel burning emissions are counted as manufacturing process emissions when they are vented through a common stack with other emissions from the manufacturing process. When fuel-burning emissions are vented separately, they are subject to the fuel burning equation.

The definition of construction was changed to clarify that while the statutory definition will govern in most instances, there are certain programs such as PSD, NSR/NAA, and NSPS, that may utilize different definitions of construction.

Revisions to the definition of federally enforceable clarify the provisions that can be considered federally enforceable. The previous definition appeared unduly restrictive. This issue is important with respect to the PSD and NSR/nonattainment area (NAA) programs since a source may avoid program requirements by taking federally enforceable conditions that reduce the level of emission below the major source threshold. The new definition clarifies that state only requirements, whether specifically denoted as such in a permit or in the regulations, but not in the state implementation plan, are not federally enforceable. The definition further clarifies that all requirements contained in an operating, PSD or NSR/NAA permit are federally enforceable.

Similarly, the definition of enforceable was revised to more accurately reflect that enforceable encompasses both federal and state enforceable requirements regardless of where the requirement appears.

In the prior version of the regulation, the definitions for coal and Reid Vapor Pressure contained references to a specific test method. These provisions were changed to refer more generally to "appropriate" test methods. These changes reflect that test methods can be updated and changed depending on the circumstances. What is considered appropriate in a given case will depend on the factual circumstance under which the test would be applied.

The definition of air pollution source, as well as several other definitions, was modified to eliminate inconsistencies with the statutory definition. Despite these inconsistencies, the Commission believes that the prior definitions were intended to have the same practical meaning as the statutory definition.

The Commission decided not to adopt changes to the definition of upset conditions or to the upset conditions and breakdown provision in the Common Provisions Regulation. The Division proposed revisions to the upset provision to address concerns expressed by the Environmental Protection Agency, then engaged in extensive discussions with interested stakeholders and the Environmental Protection Agency. In view of the terms included in the existing regulation, and the Commission's and Division's interpretation of the upset provision, the Commission concluded that no change is necessary at this time.

4) Other Issues

During the subcommittee process a question was raised as to why the definition of air pollutant differed in the Common Provisions and Regulation Number 3. These differences reflect the fact that the term is defined differently in the State and Federal Act. The Common Provisions definition reflects that State Act. The Commission is not aware of any practical implications arising from these differences.

V.J. Adopted March 10, 2004 - Definition of condensate.

The definition of the term condensate was adopted in conjunction with the Ozone Action Plan and contemporaneous revisions to Regulation Number 7 to control emissions of volatile organic compounds from condensate operations, as described in the statement of basis, specific statutory authority, and purpose for the March 10, 2004 revisions to Regulation Number 7.

The statutory authority for the definition is set out in §§ 25-7-105(1)(a) and (1)(b); 25-7-106(1)(c) and (5); and 25-7-109(1)(a) and (2), C.R.S.

V.K. Adopted March 12, 2004 - Regulation Number 9

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, § 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5.

Basis

The rule revisions adopted address the use of air curtain destructors for burning materials generated as a result of projects conducted to reduce the risk of wildfire. Regulation 9 deals with open burning activities and Regulation 3 contains emission notice requirements. The Common Provisions Regulation contains a definition related to these devices.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, § 25-7-109(2)(e), C.R.S., provides the authority for the Commission to adopt and modify emissions control regulations pertaining to open burning activities. These regulatory changes implement the provisions of the Colorado Air Pollution Prevention and Control Act, 25-7-101, et. seq., that prohibit anyone from operating an air pollution source such as an air curtain destructor without first obtaining a permit.

The Commission's action is taken pursuant to procedures set forth in §§ 25-7-105, 25-7-110 and 25-7-110.5, C.R.S. The Commission took into consideration the appropriate items enumerated in § 25-7-109(1)(b), C.R.S.

Purpose

In 2002, the Commission adopted regulations to implement the requirements of Senate Bill 99-145 and Senate Bill 01-214 relating to open burning activities by public and private land managers and other significant users of fire for range and forest management. Since that action, the public and both state and federal agencies have focused on the risks associated with wildfires, particularly in the forest/urban interface throughout Colorado. The Commission views reduction of the risks associated with wildfires and their potential for serious public health consequences as a result of the emissions from the fires as an important component in protecting public health and the environment. The Commission also views the use of methods to reduce risk that also reduce air pollution emissions compared to other methods as an additional important factor. In this rule adoption, the Commission acted to enlarge the options available to dispose of materials generated by projects conducted to reduce the risks of wildfire. It is the intention of the Commission that practical alternatives to burning be used when they exist.

The Commission reviewed the available emissions data and limited uses proposed for air curtain destructors. That information demonstrated to the satisfaction of the Commission that, with appropriate permit conditions, the destructors can safely be used to dispose of certain materials without endangering public health, causing, or contributing to a violation of the National Ambient Air Quality Standards (NAAQS) and will reduce emissions compared to traditional pile burning.

The Division performed an air dispersion modeling analysis on December 30, 2003. The analysis is based on the assumption that the air curtain destructors operate no more than 13 hours per day and no more than 110 days per year at a single site. In addition, it is assumed that no more than 20 tons of fuel will be burned per hour. At this level of operation and fuel throughput, the device would be limited to 110 days per year to meet the restriction in the proposed regulation that no more than 100 tons of any criteria pollutant be emitted per year.

Screening level air quality analyses suggest that emissions from air curtain destructors are not expected to cause violations of the carbon monoxide, sulfur dioxide, and nitrogen dioxide ambient air quality standards except in situations where the air curtain destructor is operated next to a nearby source of air pollutants that is already causing high air pollution impacts in an area that, for one reason or another, has poor existing air quality. The analyses suggest it would be prudent to require setbacks in the regulation to prevent public exposure to potentially elevated PM10 levels near the units. The proposed setbacks of 150 feet and 300 feet for short-term versus long-term sites are reasonable except in situations where the air curtain destructor is located near another stationary source of fugitive PM10 emissions. Accordingly, the rule adopted prohibits co-location of an air curtain destructor with another air curtain destructor or any facility that is required to have an air quality permit or any commercial or industrial facility.

The rule adopted contains specific limitations to assure that the devices are operated consistently with the Commission's expectations. The rule adopted allows disposal of wood products generated by projects conducted to reduce the risks of wildfire. The information presented to the Commission did not demonstrate that air curtain destructors are appropriate for disposal of other materials including clean lumber.

V.L. Adopted July 21, 2005

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, § 24-4-103, C.R.S., and the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5, C.R.S.

Basis

Regulation no. 3 sets forth the Air Quality Control Commission’s permitting and air pollutant emission notice programs for stationary sources. The Commission amended Regulation Number 3, Part A, Section V. to make it consistent with the repeal of the Emissions Trading Rule in Regulation Number 5 in December 2004. It was originally anticipated that Regulation Number 5 would replace Part A, Section V. in Regulation Number 3 as the Commission’s trading program, essentially identical to EPA’s. The text of Part A, Section V. was italicized to represent provisions that would remain effective until EPA approved the program in Regulation Number 5. EPA decided not to finalize its trading program; therefore, it would never approve Regulation Number 5 as a SIP component. The Commission deleted Section V.A.3., Part A that contained the outmoded effective date. The Commission also replaced the italicized text with normal font in all of Part A, Section V. to conform the text to these circumstances. In addition, one hazardous air pollutant (2-butoxyethanol) was deleted to conform the State’s list (in appendix b) to the Federal list of hazardous air pollutants.

The Common Provisions Regulation sets forth requirements and definitions that pertain or may pertain to all of the other Commission regulations. EPA added four compounds to its list of compounds (known as non reactive volatile organic compounds) to be excluded from the definition of volatile organic compound on the basis that these compounds make a negligible contribution to tropospheric ozone formation. The Commission adopted a conforming change to the definition of non-reactive volatile organic compounds in the Common Provisions Regulation, Section I.G.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act give the Commission authority to promulgate regulations necessary for the proper implementation of the act. § 25-7-105(12), C.R.S, provides specific authority to establish emission notice, construction permit and operating permit programs. Some of the statutory parameters for these programs are set forth in §§ 25-7-114 through 25-7-114.7 of the act and these sections, in turn, provide statutory authority for the current revisions. Additional authority for these revisions is set forth in §§ 25-7-106, 25-7-119 and 25-7-132, C.R.S. The Commission's adoption of this rule is taken pursuant to procedures set forth in §§ 25-7-105, 25-7-110 and 25-7-110.5, C.R.S.

Purpose

The Commission took into consideration the appropriate items enumerated in § 25-7-109(1)(b), C.R.S.

The purpose of removing the italicized text from Regulation Number3, Part A, Section V. was to prevent any ambiguity about the applicability of those provisions. Changing the font of the text does not have any regulatory impact since the provisions were already in effect and will remain in effect. Section V.A.3. was deleted because it was an outmoded provision that was only necessary if Section V. was to be replaced by Regulation Number 5. The Commission's repeal of Regulation Number 5 made that provision unnecessary. Removing the italics from Section V. also will eliminate confusion with the italicized text in Part D of Regulation Number 3.

The purpose of the deletion of one hazardous air pollutant in appendix b of Regulation Number 3 and the addition of four non-reactive volatile organic compounds to the list in Section I.G. of the Common Provisions Regulation is to conform the Commission's rules to Federal regulations. The Federal rule changes were published on November 29, 2004. If the Commission did not make these revisions, the State rules would be more restrictive than the Federal rules because these revisions serve to exempt the compounds from emission standards, monitoring, reporting and record keeping requirements.

V.M. Adopted August 17, 2006

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, § 24-4-103, C.R.S., and the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5, C.R.S.

Basis

On November 29, 2004, EPA revised the federal definition of volatile organic compounds (VOCs) to specifically treat tertiary butyl (t-butyl) acetate as a VOC only for certain purposes, including reporting and photochemical dispersion modeling. The Commission is making corresponding changes to the definition of VOCs in the Common Provisions Regulation, and is adding t-butyl acetate as a non-criteria reportable pollutant in Regulation Number 3, Part A, Appendix B.

Sources of t-butyl acetate will be required to report the pollutant separately from their VOC emissions on an Air Pollutant Emission Notice, and should not count their t-butyl acetate emissions when evaluating compliance with applicable VOC emission limitations. The Division should combine VOC emissions and reported t-butyl acetate emissions when conducting dispersion modeling for sources of t-butyl acetate.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, § 25-7-105, C.R.S., gives the Commission authority to promulgate regulations necessary for the proper implementation of the Act, including rules to assure attainment and maintenance of national Ambient Air Quality Standards and a prevention of significant deterioration program. § 25-7-105(12), C.R.S. provides specific authority to establish emission notice, construction permit and operating permit programs. Some of the statutory parameters for these programs are set forth in §§ 25-7-114 through 25-7-114.7 of the Act and these sections, in turn, provide statutory authority for the current revisions. Additional authority for these revisions is set forth in §§ 25-7-106, 25-7-119 and 25-7-132, C.R.S.

The Commission's adoption of this rule is taken pursuant to procedures and requirements set forth in §§ 25-7-105, 25-7-110 and 25-7-110.5, C.R.S.

Purpose

These revisions will provide clarity for affected sources by maintaining consistency with the federal definition of volatile organic compounds. Further, these revisions include any typographical errors within the regulation.

V.N. Adopted December 15, 2006

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103(4) and (12.5), C.R.S. for new and revised regulations.

Basis

The Common Provisions Regulation is designed to assist the implementation of more substantive regulatory programs authorized under the Colorado Air Pollution Prevention and Control Act ("Act") including provisions of the State Implementation Plan addressed in §, 25-7-105(1)(a), C.R.S., emission control regulations addressed in §, 25-7-105(1)(b), C.R.S., prevention of significant deterioration requirements addressed in §, 25-7-105(1)(c), C.R.S., as well as other authorized programs under the Act. The current revisions have been promulgated in order to facilitate this goal. The revisions were proposed by the Air Pollution Control Division based on discussions with EPA and extensive discussions with interested parties regarding the availability of an affirmative defense for upset conditions or malfunctions.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-105(1)(a) authorizes the Commission to adopt rules necessary to implement the Act, and to adopt and revise comprehensive state implementation plans to assure attainment and maintenance of national ambient air quality standards. C.R.S. § 25-7-109 authorizes the Commission to adopt rules that are consistent with state policy regarding air pollution and with federal recommendations and requirements. C.R.S. § 25-7-109(5) requires the Commission to promulgate rules setting conditions and time limitations for periods of startup, shutdown or malfunction or other conditions which justify temporary relief from controls. Additional authority for these revisions is set forth in §, 25-7-106 and 25-7-109, C.R.S.

Purpose

Revisions to Section II.E., regarding upset conditions and malfunctions, were made to clarify the process by which a source must identify an upset or malfunction. The Division has changed the term upset to malfunction for consistency with EPA policy.

In addition, the provision was revised to clarify that an affirmative defense is available to claims for violation of the Commissions' regulations for civil penalties in enforcement actions regarding excess emissions arising from upset conditions and malfunctions. The Commission does not interpret this to mean that every upset should be reported by the Division to EPA as a violation. The affirmative defense is not available to a claim of violation of these regulations in the context of claims for injunctive relief. Sudden and unavoidable upset conditions and malfunctions caused by circumstances beyond the control of an owner or operator occur from time to time despite best efforts regarding planning, design and operational procedures. The upset conditions and malfunction provision recognizes this fact. An affirmative defense may be available to shield a source from civil penalty liability if the owner or operator meets the requirements of the rule. For purposes of II.E.1.J. the Commission does not intend that modeling be done to show that Upsets or malfunctions have or have not caused a violation of the NAAQS.

Section II.E.4 indicates that the affirmative defense does not apply to federally promulgated standards (such as NSPS and NESHAPS requirements). The Commission does not intend this provision to modify those federally promulgated standards or any exemptions for malfunction events that may apply under those standards.

Additionally, the Commission recognizes and intends that certain source permits may not currently adequately accommodate malfunctions as this new rule provides. The Commission intends that the Division work with those specific sources to accommodate malfunctions into their permit limits, as appropriate.

V.O. Adopted December 17, 2009

Revisions to Definitions

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103(4) and (12.5), C.R.S. for new and revised regulations.

Basis

The Common Provisions Regulation is designed to assist the implementation of more substantive regulatory programs authorized under the Colorado Air Pollution Prevention and Control Act ("Act") including provisions of the State Implementation Plan addressed in §, 25-7-105(1)(a), C.R.S., emission control regulations addressed in §, 25-7-105(1)(b), C.R.S., prevention of significant deterioration requirements addressed in §, 25-7-105(1)(c), C.R.S., as well as other authorized programs under the Act. The current revisions have been promulgated in order to facilitate this goal.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-105(1)(a) authorizes Colorado's Air Quality Control Commission ("Commission") to adopt rules necessary to implement the Act, and to adopt and revise comprehensive state implementation plans to assure attainment and maintenance of national ambient air quality standards. C.R.S. § 25-7-109 authorizes the Commission to adopt rules that are consistent with state policy regarding air pollution and with federal recommendations and requirements. C.R.S.§ 25-7-106(1)(a) authorizes the Commission to adopt definitions of air pollution. Additional authority for these revisions is set forth in §, 25-7-106 and 25-7-109, C.R.S.

Purpose

Revisions to definitions found in Section I.G. were made to be consistent with federal definitions. Specifically, the Commission herein revises the definition of "negligibly reactive volatile organic compound," or NRVOC, and "volatile organic compound," or VOC, set forth in the Common Provisions Regulation to be consistent with the federal definitions found in the Code of Federal Regulations, Title 40, Part 51, § 51.100(s) (July 1, 2009).

Specifically, the Commission adds the following compounds to the definition of "negligibly reactive volatile organic compounds":

(1)1,1,1, 2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300)

Propylene carbonate

Dimethyl carbonate

The Commission adds clarification to the NRVOC definition by adding the common name or chemical structure of currently listed NRVOCs.

The Commission adds clarification to the VOC definition by adding the test methodology references used to determine VOC and NRVOC contents.

Additionally, any identified typographical, grammatical and formatting errors are proposed to be made.

V.P. Adopted October 21, 2010 (Sections I.A., I.F. and I.G.)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103(4) and (12.5), C.R.S. for new and revised regulations.

Basis

The Common Provisions Regulation is designed to assist the implementation of more substantive regulatory programs authorized under the Colorado Air Pollution Prevention and Control Act ("Act") including provisions of the State Implementation Plan (SIP) addressed in C.R.S. § 25-7-105(1)(a), emission control regulations addressed in C.R.S. § 25-7-105(1)(b), prevention of significant deterioration requirements addressed in C.R.S. § 25-7-105(1)(c), regulations as may be necessary and proper for the orderly and effective administration of construction permits and renewable operating permits addressed in C.R.S. § 25-7-114.4(1), as well as other authorized programs under the Act. The current revisions have been promulgated in order to facilitate this goal.

The revisions were proposed by the Air Pollution Control Division based on EPA's GHG Tailoring Rule. On June 3, 2010, EPA promulgated the "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule". 75 Federal Register 31514 (June 3, 2010). EPA's GHG Tailoring Rule was designed to tailor the applicability criteria that determine which stationary sources and modification projects become subject to permitting requirements for greenhouse gases (GHGs) under the Prevention of Significant Deterioration (PSD) and Title V Permitting Programs of the Clean Air Act (CAA).

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-105(1)(a) authorizes the Commission to adopt rules necessary to implement the Act, and to adopt and revise comprehensive state implementation plans to assure attainment and maintenance of national ambient air quality standards. C.R.S. § 25-7-109 authorizes the Commission to adopt rules that are consistent with state policy regarding air pollution and with federal recommendations and requirements. C.R.S. § 25-7-109(2) authorizes the Commission to regulate oxides of carbon, oxides of nitrogen and other chemicals, which encompasses the pollutant GHG. Additionally, Colorado is authorized to regulate the pollutant GHG under PSD and Title V in C.R.S. §§ 25-7-103(1.5), 25-7-114(3), 25-7-114.3, and 25-7-201. Additional authority for these revisions is set forth in §§ 25-7-106 and 25-7-109, and 25-7-114 C.R.S.

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103(4), C.R.S. for new and revised regulations.

In order to maintain consistency between state regulations and federally enforceable regulations contained in the SIP, the Commission intends these revisions be adopted into the SIP.

Purpose

The Air Quality Control Commission has adopted revisions throughout the Common Provisions Regulation to address GHG regulation in Colorado.

Common Provisions Proposed Revisions:

The revisions to the Common Provisions as approved by the Commission are summarized below:

Revise Applicability section to be consistent with the incorporation by reference section found in Regulation Number 3, Part A, Section I.A. (Section I.A.)

Add GHG and CO2e to list of acronyms (Section I.F.)

Revise definitions of Greenhouse Gas & Carbon Dioxide Equivalent (Section I.G.)

Additionally, the Division proposes revisions to make typographical, grammatical and formatting changes, as necessary.

V.Q. Adopted November 19, 2015 (Definitions and Affirmative Defense)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103(4) and (12.5), C.R.S. for new and revised regulations

Basis

The Air Quality Control Commission ("AQCC") adopted these revisions to address EPA's June 12, 2015 *State Implementation Plans ["SIPs"]: Response to Petition for Rulemaking; Restatement and Update of EPA's Startup, Shutdown and Malfunction ("SSM") Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction*. *80 Fed. Reg. 33840* ("SSM SIP Call"). EPA's SSM SIP Call, relied in part on *Nat'l Res. Def. Council ("NRDC") v. EPA*, 749 F. 3d 1055, 1062 (D.C. Cir. 2014). Additionally, several administrative revisions were made in order to ensure consistency with federal requirements and provide clarity for affected sources.

Specific Statutory Authority

The statutory authority for these revisions is set forth in the Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-101, et. seq. Specifically, C.R.S. § 25-7-105(1)(a) authorizes the Commission to adopt rules necessary to implement the Clean Air Act ("CAA"), and to adopt and revise comprehensive State Implementation Plans ("SIPs") to assure attainment and maintenance of National Ambient Air Quality Standards ("NAAQS"). Additionally, C.R.S. § 25-7-109(5) requires the Commission to promulgate rules setting conditions and time limitations for periods of startup, shutdown and malfunction ("SSM") or other conditions which justify temporary relief from controls. C.R.S. § 25-7-109 authorizes the Commission to adopt rules that are consistent with state policy regarding air pollution and with federal recommendations and requirements. Additional authority of the Commission to adopt these revisions can be found in C.R.S. §, 25-7-106, which grants the Commission maximum flexibility in developing an effective air quality control program. Lastly, C.R.S. § 25-7-115 addresses state enforcement of violations that occur during SSM events.

Purpose

EPA's June 12, 2015 SSM SIP Call identified a number of states with SIP-approved affirmative defenses for excess emissions during SSM events. With respect to Colorado, the SSM SIP Call found Sections II.E. and II.J. to be substantially inadequate and it established a November 22, 2016 deadline for Colorado to submit corrective SIP revisions.

EPA's final rule differed from the February 22, 2013 proposal (*78 Fed. Reg. 12460*), made in response to a petition for rulemaking filed by the Sierra Club concerning the treatment of excess emissions in state rules during periods of SSM. In that proposal, EPA proposed to partially grant/deny the Sierra Club's petition regarding the SSM provisions in SIPs. With respect to Colorado, EPA proposed that the Section II.J. was inadequate and that Section II.E. was adequate. *78 Fed. Reg. 12529.*

On May 13, 2013, the Division submitted comments supporting EPA's proposed finding of adequacy for Section II.E. and opposing EPA's proposed finding of inadequacy for Section II.J. The Division's opposition to this finding of inadequacy was based in part on the recognition that Sections II.E. and II.J. were agreed upon during a December 15, 2006 rulemaking that incorporated EPA's most recent SSM guidance and resulted in a consensus between the Division, EPA Region 8, environmental groups and industry. EPA approved Sections II.E. and II.J. for incorporation into Colorado's SIP.

Subsequent to the February 22, 2013 proposal, the United States District Court for the District of Colombia invalidated an affirmative defense provision contained in the 2010 National Emission Standards for Hazardous Air Pollutants (NESHAP) from the Portland Cement Manufacturing Industry, holding that EPA does not have authority under the CAA to adopt affirmative defense provisions that alter the federal courts' authority to impose penalties. *See NRDC v. EPA*. 749 F. 3d at 1055. The court reasoned the federal CAA gives the courts exclusive authority to determine and impose appropriate penalties for violations under the federal CAA, and EPA's adoption of affirmative defense provisions impermissibly intruded upon this authority. Notably, the D.C. Circuit in the *NRDC* decision clarified that it was not confronting the question of whether affirmative defense provisions in state implementation plans are appropriate.

Based on EPA's revised interpretation of the CAA stemming from the court's decision in *NRDC v. EPA*, the SSM SIP Call maintained that both Sections II.E. and II.J. interfered with the intended enforcement structure of the CAA, through which parties may seek to bring enforcement actions for violations of SIP emission limits. *80 Fed. Reg. 33970*. The SSM SIP Call afforded states broad discretion concerning how to revise inadequate SIP provisions. *80 Fed. Reg. 33844*. Additionally, the SSM SIP Call clarified that, existing inadequate SIP provisions would remain in effect until such time as EPA evaluated and acted upon a state's SIP submission. *80 Fed. Reg. 33849.*

Thus, in order to comply with the SSM SIP Call, the Commission revised Sections II.E. and II.J. by adding Sections II.E.4. and II.J.4. to clarify that the affirmative defenses are not available in federal court proceedings unless the court, in considering the penalty factors in Section 113 of the CAA and exercising its discretion to assess civil penalties, decides to recognize or consider such affirmative defense or decides to take into consideration some or all of the factors described in Sections II.E. and II.J. The Commission added this reference to CAA Section 113 to clarify that the Commission's proposed revisions complement, rather than contradict, the requirements of CAA Section 113 because a federal court can, in its discretion, consider an affirmative defense or the factors contained in Sections II.E. and II.J. in conjunction with the factors described in CAA Section 113. The Commission also added Sections II.E.6. and II.J.7. to indicate nothing in Sections II.E. and II.J, precludes the use of alternative emission limitations expressed as work-practice based limits or standards set forth in a permit that serve as a continuous limitation during periods of SSM. Lastly, the Commission included language at the beginning of Sections II.E. and II.J. to indicate that the proposed revisions do not take effect until such time as EPA approves the language for incorporation into Colorado's SIP.

In revising Sections II.E. and II.J. as described in the preceding paragraph, the Commission acknowledged that, as of November 19, 2015, several lawsuits challenging the validity of the SSM SIP Call were pending. Given the legal uncertainty surrounding the SSM SIP Call, the Commission opted to postpone submitting these revisions until November 2016 (the deadline for SIP submissions outlined in the SSM SIP Call is November 22, 2016), so that Colorado's submittal would be considered at the same time as other state SIP submittals.

The Commission determined, after considering the statutory directives of the Air Pollution Prevention and Control Act, along with the positions set forth in the stakeholder process and associated rulemaking proceeding, the revisions being proposed in Sections II.E.4. and II.J.4. are the most balanced and appropriate approach for Colorado. The proposed language accurately responds to the SSM SIP Call while being narrowly tailored so as to not make changes beyond those required by the *NRDC* court's holding.

The proposed revisions upheld many of the tenets of the December 15, 2006 consensus rulemaking that originally inserted Sections II.E. and II.J. into the Common Provisions Regulation, including the requirements that sources notify the Division of excess emissions that occur during SSM and undertake all reasonably possible steps to minimize the amount and duration of excess emissions during SSM as well as their impacts on ambient air quality. No other rules of the Commission include these notification requirements.

In addition to the revisions to Sections II.E. and II.J., the following administrative revisions were made to Section I.G. in order to ensure consistency with federal requirements and provide clarity for affected sources: definitions were added for "Responsible Official," "Designated Representative," "PM2.5" and "Direct PM2.5 Emissions"; the incorporation date for the definition of "Carbon Dioxide Equivalent" was updated; several compounds were added to the list of Negligibly Reactive Volatile Organic Compounds ("NRVOCs") based on EPA's determination that these compounds make a negligible contribution to trophospheric ozone formation.

Further, these revisions will include any typographical, grammatical and formatting errors throughout the regulation.

V.R. Adopted: October 21, 2021

Revisions to Common Provisions Regulation, Section III.

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act §§ 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act §§ 25-7-110 and 25-7-110.5, C.R.S. ("the Act").

Basis

During the 2020 legislative session, Colorado's General Assembly adopted HB 20-1143 (Concerning additional public health protections regarding alleged environmental violations, and, in connection therewith, raising the maximum fines for air quality and water quality violations), revising § 25-7-122, C.R.S. HB 20-1143 increased the maximum civil penalty for most air violations to $47,357 per day for each day of the violation. It directs the Commission to "annually adjust the amount of the maximum civil penalty based on the percentage change in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood for all items and all urban consumers, or its successor index."

The Commission adopted revisions to Common Provisions Regulation, Section III. Specifically, the Commission adopted revisions to increase the maximum civil penalty from $47,357 to $49,020 per day for each day of the violation.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act, § 25-7-122 requires the Commission to annually adjust the maximum civil penalty amount.

Purpose

The Commission adopted revisions to Common Provisions, Section III. to comply with the requirement in § 25-7-122 to annually adjust the maximum civil penalty for most air violations based on the percentage change in the Consumer Price Index for Denver-Aurora-Lakewood for all items and all urban consumers (CPI). The annual adjustment is based on the percentage by which the CPI for July of the current year exceeds the CPI for July of the previous year.

The new maximum penalty effective January 1, 2022 was determined as follows:

Percentage change in the CPI from July 2020 to July 2021 = 3.512% = ((285.268-275.589)/275.589) x 1003.512% = 0.03512

Change in maximum penalty amount = $1,663 = $47,357 x 0.03512

New maximum penalty effective January 1, 2022 = $49,020 = $47,357 + $1,663

The Commission did not change the maximum civil penalty for violations of § 25-7-114.1 (Air Pollutant Emission Notices). Additionally, the Commission did not change the maximum civil penalty for the gasoline dispensing facility violations described in § 25-7-122(1)(f)(g).

The revisions also correct any typographical, grammatical, and formatting errors found throughout the regulation.

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Tracking number: 2021-00439

Opinion of the Attorney General rendered in connection with the rules adopted by the

Air Quality Control Commission

on 10/21/2021

5 CCR 1001-2

COMMON PROVISIONS REGULATION

The above-referenced rules were submitted to this office on 10/26/2021 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.

November 09, 2021 15:05:36

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

CCR number

5 CCR 1001-26

Rule title

5 CCR 1001-26 REGULATION NUMBER 22 COLORADO GREENHOUSE GAS REPORTING AND EMISSION REDUCTION REQUIREMENTS 1 - eff 12/15/2021

Effective date

12/15/2021

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 22

Colorado Greenhouse Gas Reporting and Emission Reduction Requirements

5 CCR 1001-26

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

Outline of Regulation

PART A Greenhouse Gas Reporting

PART B Greenhouse Gas Emission Reduction Requirements

PART C General Provisions

PART D Statement of Basis, Specific Statutory Authority, and Purpose

Pursuant to Colorado Revised Statutes § 24-4-103 (12.5), materials incorporated by reference are available for public inspection during normal business hours, or copies may be obtained at a reasonable cost from the Air Quality Control Commission (the Commission), 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530. The material incorporated by reference is also available through the United States Government Printing Office, online at www.gpo.gov/fdsys. Materials incorporated by reference are those editions in existence as of the date indicated and do not include any later amendments.

Unless otherwise indicated, any incorporation by reference of provisions of Title 40, Part 98, of the Code of Federal Regulations (CFR) are to the edition effective as of July 1, 2019.

PART A Greenhouse Gas Reporting

I. General Provisions

I.A. This regulation establishes mandatory greenhouse gas (GHG) monitoring, recordkeeping and reporting requirements for owners and operators of certain facilities that directly emit GHGs, and retail or wholesale electric service providers.

I.B. Suppliers will be required to report GHGs based upon the quantity that would be associated with combustion or use of the products supplied.

II. Definitions

II.A. "Anaerobic Process" means a procedure in which organic matter in wastewater, wastewater treatment sludge, or other material is degraded by microorganisms in the absence of oxygen, resulting in the generation of carbon dioxide (CO_2) and methane (CH_4). This source category consists of the following: anaerobic reactors, anaerobic lagoons, anaerobic sludge digesters, and biogas destruction devices (for example, burners, boilers, turbines, flares, or other devices).

II.B. "Carbon Dioxide Equivalent (CO2e)" means a metric measure used to compare the emissions from various GHG based upon their global warming potential (GWP). CO2e is determined by multiplying the mass amount of emissions (metric tons per year), for each GHG constituent by that gas's GWP, and summing the resultant values to determine CO2e (metric tons per year).

II.C. "CFR" means Code of Federal Regulations.

II.D. "Counterparty" means a marketer, utility, or other entity with whom an energy transaction occurs or a market operator responsible for settlement in an organized market.

II.E. "Designated Representative" means an individual selected by an agreement binding on the owners and operators of such facility or supplier and acting in accordance with the certification statement in Section IV.B.6.

II.F. "Domestic Wastewater Treatment Plant" has the same meaning as defined by the Water Quality Control Commission in 5 Code of Colo. Regs. (CCR) 1002-22 (September 30, 2009).

II.G. "Electric Service Provider" or "Electric Utility" means any corporation, agency, or other legal entity that generates electricity for sale through combustion of fossil fuels or sells electricity for retail or wholesale use, including imported, exported, or in-state electricity, in the State of Colorado. Electric service provider or electric utility does not include an entity that generates electricity which is consumed solely at the facility or complex where the generation occurs

II.H. "Emergency Generator" means a stationary combustion device, such as a reciprocating internal combustion engine or turbine that serves solely as a secondary source of mechanical or electrical power whenever the primary energy supply is disrupted or discontinued during power outages or natural disasters that are beyond the control of the owner or operator of a facility. An emergency generator operates only during emergency situations, for training of personnel under simulated emergency conditions, as part of emergency demand response procedures, or for standard performance testing procedures as required by law or by the generator manufacturer. A generator that serves as a back-up power source under conditions of load shedding, peak shaving, power interruptions pursuant to an interruptible power service agreement, or scheduled facility maintenance is not considered an emergency generator.

II.I "Energy Transaction" means a specified quantity of electricity purchased or sold at a known transaction point or through an organized market.

II.J. "Exported Electricity" means electricity generated inside the State of Colorado and delivered to serve load located outside the State of Colorado. Exported electricity does not include electricity that is generated outside the State of Colorado, is transmitted through the State of Colorado, and with the final point of delivery outside the State of Colorado.

II.K. "Facility" means any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right of way and under common ownership or common control, that emits or may emit any greenhouse gas. Operators of military installations may classify such installations as more than a single facility based on distinct and independent functional groupings within contiguous military properties.

II.L. "Food Processing" means an operation used to manufacture or process meat, poultry, fruits, and/or vegetables as defined under NAICS 3116 (Meat Product Manufacturing) or NAICS 3114 (Fruit and Vegetable Preserving and Specialty Food Manufacturing). For information on NAICS codes, see http://www.census.gov/eos/www/naics/ (as published January 30, 2020).

II.M. "Global Warming Potential" or "GWP" means the ratio of the time-integrated radiative forcing from the instantaneous release of one kilogram of a trace substance relative to that of one kilogram of a reference gas, i.e., (CO_2). For the GHG emissions calculations requirements of this rule, the GWP values that must be used are as specified in Table A-1 to Subpart A of Title 40 CFR Part 98.

II.N. "Greenhouse Gas" or "GHG" means carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF_6) and Nitrogen Trifluoride (NF_3).

II.O. "Hydrofluorocarbons (HFCs)" means a class of GHGs consisting of hydrogen, fluorine, and carbon.

II.P. "In-State Electricity" means electricity generated inside the State of Colorado and delivered to serve load within the State of Colorado. In-state electricity does not include electricity that is generated outside the State of Colorado, is transmitted through the State of Colorado, and with the final point of delivery outside the State of Colorado.

II.Q. "Industrial Waste Landfill" means a landfill other than a municipal solid waste landfill, a Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste landfill, or a Toxic Substance Control Act (TSCA) hazardous waste landfill, in which industrial solid waste, such as RCRA Subtitle D wastes (non-hazardous industrial solid waste, defined in 40 CFR § 257.2 (May 30, 2017)), commercial solid wastes, or conditionally exempt small quantity generator wastes, is placed. An industrial waste landfill includes all disposal areas at the facility.

II.R. "Industrial Wastewater Treatment" means use of anaerobic processes to treat industrial wastewater and industrial wastewater treatment sludge at pulp and paper manufacturing, food processing, ethanol production and petroleum refining facilities. Industrial wastewater treatment does not include municipal wastewater treatment plants or separate treatment of sanitary wastewater at industrial sites.

II.S. "Imported Electricity" means electricity generated outside the State of Colorado and delivered to serve load within the State of Colorado. Imported electricity does not include electricity that is generated outside the State of Colorado, is transmitted through the State of Colorado, and with the final point of delivery outside the State of Colorado.

II.T. "Local Distribution Company" or "LDC" means a company that owns or operates distribution pipelines, not interstate pipelines or intrastate pipelines, that physically deliver natural gas to end users and that are within a single state that are regulated as separate operating companies by State public utility commissions or that operate as independent municipally-owned distribution systems. LDCs do not include pipelines (both interstate and intrastate) delivering natural gas directly to major industrial users and farm taps upstream of the local distribution company inlet.

II.U. "Metric Ton" means a common international measurement for mass equal to 1,000 kilograms, which is equivalent to 2204.6 pounds or 1.1 short tons.

II.V. "Municipal Solid Waste Landfill" or "MSW Landfill" means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes (40 CFR § 257.2 (May 30, 2017)) such as commercial solid waste, non-hazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads, public roadways, or other public right-of-ways. An MSW landfill may be publicly or privately owned.

II.W. "Natural Gas Transmission and Storage" has the same meaning as "natural gas transmission and storage segment" as defined in Air Commission Regulation Number 7, Part D, Section IV.A. (effective February 14, 2020).

II.X. "North American Industry Classification System (NAICS) Code(s)" means the six-digit code(s) that represents the product(s)/activity(s)/service(s) at a facility or supplier as listed in the Federal Register and defined in "North American Industrial Classification System Manual 2007," available from the U.S. Department of Commerce, National Technical Information Service, Alexandria, VA 22312 and http://www.census.gov/eos/www/naics/ (as published January 30, 2020).

II.Y. "Oil and Natural Gas Operations and Equipment" means the equipment and activities listed in AQCC Regulation Number 7, Part D, Section V.C. (effective February 14, 2020).

II.Z. "Perfluorocarbons (PFCs)" means a class of greenhouse gases consisting on the molecular level of carbon and fluorine.

II.AA. "Research and Development" means those activities conducted in process units or at laboratory bench-scale settings whose purpose is to conduct research and development for new processes, technologies, or products and whose purpose is not for the manufacture of products for commercial sale, except in a de minimis manner.

II.BB. "Responsible Official" means the definition of that term found in the Air Quality Control Commission's Common Provisions Regulation (effective January 14, 2016).

II.CC. "Retail Utility" means an electric service provider or electric utility that sells electricity to end-use customers or ratepayers.

II.DD. "Supplier" means a producer, importer, or exporter in any supply category included in Table A-5 of Subpart A, 40 CFR Part 98, as defined by the appropriate subpart in 40 CFR Part 98.

II.EE "Transaction Point" means a recognized electrical location where seller agrees to deliver energy and purchaser agrees to receive energy for bilateral trades or settlement schedules regardless of market type or an identified settlement location or settlement area in an organized market.

II.FF. "Unspecified Energy" is electricity that is not traceable to a specific generating facility, such as electricity traded through open market transactions. This electricity is typically a mix of resource types, and may include renewables.

II.GG. "Wholesale Utility" means an electric service provider or electric utility that sells electricity or energy to a retail utility or other wholesale utility.

II.HH. "Year" means calendar year.

III. Applicability and Emissions Quantification for Affected Sources

III.A. The GHG monitoring, recordkeeping, and reporting requirements of this rule apply to the owners and operators of any facility or entity that is located in the State of Colorado and that meets any of the following requirements:

III.A.1. Any electric service provider or electric utility, regardless of annual GHG emission quantities. GHGs reported must include all emissions from electricity generation and transmission and distribution equipment, not including emergency generators.

III.A.2. Any local distribution company distributing natural gas in the State of Colorado, regardless of annual GHG emission quantities.

III.A.3. Any industrial waste landfill active at any point during the year, regardless of annual GHG emission quantities. Inert material facilities as defined under 6 CCR 1007-2, Part 1 (November 30, 2019), are exempt from the requirements of this regulation. The GHGs reported must include emissions from the landfill, landfill gas collection systems, and destruction devices for landfill gases

III.A.4. Any industrial wastewater treatment, regardless of annual GHG emission quantities.

III.A.5. Any underground coal mine meeting the source category definition for an underground coal mine in Subpart FF of 40 CFR, Part 98 at any point during the year and regardless of annual GHG emission quantities.

III.A.6. Any facility or supplier not covered under Sections III.A.1. through III.A.5. or III.C. that is required to report under 40 CFR Part 98 as incorporated herein must report GHGs directly to the State of Colorado to the same extent as reported under 40 CFR Part 98. The requirement to report pursuant to 40 CFR, Part 98 as incorporated herein continues to apply regardless of future revisions to 40 CFR, Part 98.

III.A.7. Any municipal solid waste landfill not required to report under 40 CFR Part 98 may voluntarily report GHGs. The GHGs reported must include emissions from the landfill, landfill gas collection systems, and destruction devices for landfill gases.

III.A.8 Any domestic wastewater treatment plant may voluntarily report GHGs.

III.A.9. Any agricultural operation may voluntarily report GHGs or operational information sufficient to allow the Division to determine GHGs.

III.A.10. Research and development activities are excluded from GHG reporting requirements.

III.B. To quantify GHG emissions for the reporting purposes of this rule, the owner or operator of a facility or an entity identified in Section III.A. must calculate GHG emissions by year as described, and any reporting requirement under 40 CFR, Part 98 and its Subparts as incorporated herein continue to apply regardless of future revisions to 40 CFR, Part 98.

III.B.1. For an electric service provider or electric utility identified in Section III.A.1, GHG emissions must be calculated using the applicable calculation methodologies and appropriate equations specified in Subparts C, D, and DD of 40 CFR, Part 98.

III.B.2. For a local distribution company identified in Section III.A.2., GHG emissions must be calculated using the applicable calculation methodologies specified in Subparts W and NN of 40 CFR, Part 98.

III.B.3. For an industrial waste landfill identified in Section III.A.3., GHG emissions must be calculated according to Subpart C, if applicable, and Subpart TT of 40 CFR, Part 98.

III.B.4. For industrial wastewater treatment identified in Section III.A.4., GHG emissions must be calculated according to Subpart C, if applicable, and Subpart II of 40 CFR, Part 98.

III.B.5. For an underground coal mine identified in Section III.A.5., GHG emissions must be calculated according to Subpart C, if applicable, and Subpart FF of 40 CFR, Part 98.

III.B.6. For a facility or supplier included pursuant to Section III.A.6., GHG emissions must be calculated using the calculation methodologies specified in each applicable Subpart of 40 CFR, Part 98.

III.B.7. For a municipal solid waste landfill identified in Section III.A.7., GHG emissions must be calculated according to Subpart C, if applicable, and Subpart HH of 40 CFR, Part 98.

III.B.8. For a domestic wastewater treatment plant identified in Section III.A.8., GHG emissions must be calculated using GHG emission estimating protocols acceptable to the Division.

III.B.9. For an agricultural operation identified in Section III.A.9., reported GHG emissions or operational information must utilize emission calculation protocols that are acceptable to the Division and applicable to the specific activities or types of operations in the agricultural sector.

III.C. Oil and Natural Gas Reporting Requirements:

III.C.1. Oil and natural gas operations and equipment at or upstream of a natural gas processing plant are not subject to Sections III.A, III.B, IV, and V of this regulation and must report GHG emissions to the State of Colorado according to the requirements of AQCC Regulation Number 7, Part D, Section V. (effective February 14, 2020). Records of information included in reports submitted pursuant to AQCC Regulation Number 7, Part D, Section V. (effective February 14, 2020) must be maintained for a period of two (2) years and made available to the Division upon request.

III.C.2. Natural gas transmission and storage are not subject to Sections III.A, III.B, IV and V of this regulation and must report GHG emissions according to the requirements of AQCC Regulation Number 7, Part D, Section IV. (effective February 14, 2020).

IV. Reporting Requirements

IV.A. Owners and operators of facilities or entities identified in Section III.A. must submit a report of all GHG emissions or supply in the previous calendar year. GHG emissions or supply must be reported utilizing Division-approved format or forms.

IV.A.1. The first report for owners and operators of facilities or entities required to report for calendar year 2020 pursuant to 40 CFR, Part 98 is due on or before March 31, 2021 (and by March 31 every year thereafter).

IV.A.2. Owners and operators of facilities or entities covered by Sections III.A.1 through III.A.5 must report to the Division even if their emissions are below the reporting thresholds of 40 CFR, Part 98. The first report for owners and operators of facilities or entities under Sections III.A.1. through III.A.5. that were not required to submit a federal report for calendar year 2020 pursuant to 40 CFR, Part 98 is due on or before March 31, 2022 for calendar year 2021 (and by March 31 every year thereafter).

IV.A.3. Owners and operators of facilities or entities under Sections III.A.7. through III.A.9. may report for any year. GHG emissions reported under this Section IV.A.3. must be submitted by March 31 for the prior year.

IV.B. GHG reports submitted must include the following:

IV.B.1. Individual GHG constituents (in metric tons per year) and aggregated CO2e emissions.

IV.B.2. AIRS ID if assigned to a subject facility, along with the facility name, entity name or supplier name (as appropriate), and physical street address of the facility, entity or supplier, including the city, State, and zip code. If the facility does not have a physical street address, then the facility must provide the latitude and longitude representing the geographic centroid or center point of facility operations in decimal degree format. This must be provided in a comma-delimited “latitude, longitude” coordinate pair reported in decimal degrees to at least four digits to the right of the decimal point.

IV.B.3. NAICS code(s) that apply to the facility or supplier, including the primary NAICS code and any additional NAICS code(s).

IV.B.4. Year and months covered by the report.

IV.B.5. Date of submission.

IV.B.6. Certification statement signed and dated by a responsible official, or their designated representative, that identifies the individual’s title and contact information and attests that the report being submitted is true, accurate and complete to the best of the certifying individual’s knowledge.

IV.C. In addition to the information required under Section IV.B., electric service providers and electric utilities must also report the following information for the prior year using Division-approved forms by no later than June 30 of each year:

IV.C.1. Beginning June 30, 2022, data elements necessary for the Division to determine GHG emissions attributable to imported and exported electricity. The reporting requirements in Section IV.C.1. track emissions associated with imports and exports in order to attribute GHG emissions from electricity delivered to customers in the State of Colorado, and determine GHG emissions from electricity exported out of the state. Emissions from imports and exports also informs the development, assessment, and refinement of strategies to achieve the statewide greenhouse gas targets and may assist local organizations with GHG planning efforts.

IV.C.1.a. In reporting the requirements of this Section IV.C.1., the electric service provider or electric utility will:

IV.C.1.a.(i) Use the reporting form published by the Division to report annualized data in a consistent format.

IV.C.1.a.(ii) Use the most detailed data readily available for business purposes when determining the annual reported values including, but not limited to, short or long term contracts, internal tracking systems for energy transactions between counterparties or through organized markets, or for other regulatory reporting requirements to the Colorado Public Utilities Commission, US EPA, Energy Information Administration, or Federal Energy Regulatory Commission.

IV.C.1.a.(iii) Use the most specific data sources in the published form for assigning GHG emissions to imports and exports of unspecified energy, electricity acquired through contract obligations, market electricity purchased or sold from a pooled group of resources, or renewable energy for which a renewable energy credit is not included with the purchase or sale. Data sources may include defined contractual requirements, facility specific or portfolio GHG emissions factors, published balancing authority or regional emissions intensity factors, or other data sources approved in advance by the Division.

IV.C.1.a.(iv) Not be required to report duplicative information from generation facilities, wholesale utilities, and retail utilities under common ownership of an electric service provider or electric utility.

IV.C.1.b. The annual data elements to be reported pursuant to Section IV.C.1. include but are not limited to:

IV.C.1.b.(i) For each fossil fuel fired generation facility, the Total Gross Megawatt-hours (MWh) generated at the facility and Net MWh received by each entity with an ownership stake in the facility, which must be reported by the entity with operational control.

IV.C.1.b.(ii) For each electric utility or electric service provider, the following information, aggregated by Counterparty, where applicable:

IV.C.1.b.(ii)(A) For all imported electricity, the quantity of electricity, and associated GHG emissions, including the emissions factors and emissions-factor basis, imported directly from owned generation or contracted generation located outside the State of Colorado, the quantity of electricity and associated GHG emissions, including the emissions factors and emissions-factor basis, purchased at Transaction Points located outside the State of Colorado and imported into Colorado, and the quantity of electricity and associated GHG emissions, including the emissions factors and emissions-factor basis, sold from out of state generation at Transaction Points within the State of Colorado;

IV.C.1.b.(ii)(B) For all exported electricity, the quantity of electricity, and associated GHG emissions, including the emissions factors and emissions-factor basis, delivered to Transaction Points outside the State of Colorado; and

IV.C.1.b.(iii) For each wholesale or retail utility, the quantity of renewable energy credits including vintage year acquired and transferred through energy transactions, sold, or retired to meet Colorado renewable energy standards.

IV.C.2. The data elements necessary for the Division to track the progress of GHG reductions from plans that have been approved by the Public Utilities Commission, including but not limited to Clean Energy Plans filed in accordance with § 40-2-125.5, C.R.S. (May 30, 2019). Progress tracking after a plan has been approved will inform development, assessment, and refinement of strategies to achieve the statewide greenhouse gas targets. Data collection pursuant to this Section IV.C.2. begins on January 1 of the year following approval of a plan, and the first report is due no later than June 30 of the year following the first year of data collection and annually thereafter.

IV.C.2.a. In reporting the requirements of this Section IV.C.2., the electric service provider or electric utility will:

IV.C.2.a.(i) Use the annual reporting form published by the Division, which is to be consistent with the methods, forms, or reports used for filings to the Public Utilities Commission.

IV.C.2.a.(ii) Use references to information submitted to the Public Utilities Commission as support for data elements reported on the form in lieu of submitting duplicative information to the Division.

IV.C.2.b. The data elements that must be reported pursuant to Section IV.C.2. include, but are not limited to:

IV.C.2.b.(i) Calculations of percent CO2 and percent GHG reductions from the 2005 baseline emissions approved in the plan. For utilities that conduct both retail and wholesale sales, percent reduction calculations must be provided based on retail sales only as well as for total combined retail and wholesale sales.

IV.C.2.b.(ii) A statement of the GHG accounting methodology used in the approved plan and percent reduction calculations, and any changes to that methodology if they occur for the reporting year. If methodology changes occur, supporting data for both the reporting year and baseline year must be provided to verify the percent reduction calculations.

IV.C.2.b.(iii) Changes in service territory from that identified in the approved plan that may impact the baseline values and percent reduction calculations.

IV.C.2.b.(iv) Plan Revisions filed with the Public Utilities Commission that are awaiting approval.

IV.C.2.b.(v) The number of renewable energy credits used for compliance with a Clean Energy Plan with the same vintage as the reporting year, that are generated and retired during the year.

IV.D. Report Revisions Due to Substantive Errors

IV.D.1. A substantive error is an error that impacts the quantity of GHG emissions reported or otherwise prevents the reported data from being validated or verified.

IV.D.2. If one or more substantive errors as defined in Section IV.D.1. are discovered in a previously submitted GHG report by an entity responsible for preparing or submitting the report, or providing data for the report, the Division must be notified in writing of the errors within five (5) business days of discovery of the errors and a revised report that corrects the substantive errors must be submitted within forty-five (45) days of the discovery of the errors.

IV.D.3. If the Division identifies substantive errors in a submitted report, the Division may notify the entity responsible for the report of the errors and a revised report that corrects the substantive errors must be submitted within forty-five (45) days of the notification.

IV.D.4. The Division may provide reasonable extensions of the forty-five day (45) period for submission of a revised report on a case-by-case basis when requested in writing by the reporting entity. The extension request must include details on why the request is being made and the additional requested time needed to submit the revised report.

V. Recordkeeping Requirements

V.A. All data elements and reports listed must be retained by the owners and operators of facilities or entities reporting under Section III.A. and be provided to the Division upon request:

V.A.1. All records of supporting documentation used to prepare and submit the GHG report, including but not limited to:

V.A.1.a. All units, operations, processes, and activities for which GHG emissions were calculated.

V.A.1.b. Operating data, fuel use records, or process information used for GHG emissions calculations.

V.A.1.c. GHG emissions calculations and methods used, including a written explanation if emission calculation methodologies used during the reporting period are changed.

V.A.1.d. Any records required to be retained pursuant to Subpart A of 40 CFR, Part 98 and the applicable Subparts of 40 CFR, Part 98 identified in Section III.B.

V.A.2. Reports submitted pursuant to the requirements of Section IV.

V.B. Records required under this Section V. must be maintained for five (5) years from the date of submission of the annual GHG report.

PART B Greenhouse Gas Emission Reduction Requirements

I. Prohibitions on Use of Certain Hydrofluorocarbons in Aerosol Propellants, Chillers, Foam, and Stationary Refrigeration End-Uses

I.A. Purpose and Applicability

I.A.1. The purpose of this regulation is to reduce hydrofluorocarbon (HFC) emissions in the State of Colorado by adopting United States Environmental Protection Agency (EPA) Significant New Alternatives Policy (SNAP) Program prohibitions for certain HFCs in air conditioning and refrigeration equipment, aerosol propellants, and foam end-uses. This regulation is designed to support greenhouse gas emission reductions identified in Colorado Revised Statutes, § 25-7-102(2)(g).

I.A.2. This regulation applies to any person, who on or after June 1, 2020, sells, offers for sale, leases, rents, installs, uses, or manufacturers in the State of Colorado any product or equipment that uses or will use a substance listed as prohibited in the end-uses listed in Section I.E.1.

I.B. Definitions

I.B.1. “Aerosol Propellant” means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or other material from the same self-pressurized container or from a separate container.

I.B.2. "Air Conditioning Equipment" means chillers, both centrifugal chillers and positive displacement chillers, intended for comfort cooling of occupied spaces.

I.B.3. "Bunstock" or "Bun Stock" means a large solid box-like structure formed during the production of polyurethane, polyisocyanurate, phenolic, or polystyrene insulation.

I.B.4. "Capital Cost" means an expense incurred in the production of goods or in rendering services including but not limited to the cost of engineering, purchase, and installation of components and/or systems, and instrumentation, and contractor and construction fees.

I.B.5. "Centrifugal Chiller" means air conditioning equipment that utilizes a centrifugal compressor in a vapor-compression refrigeration cycle typically used for commercial comfort air conditioning. Centrifugal chiller in this definition is a chiller intended for comfort cooling and does not include cooling for industrial process cooling and refrigeration.

I.B.6. "Cold Storage Warehouse" means a cooled facility designed to store meat, produce, dairy products, and other products that are delivered to other locations for sale to the ultimate consumer.

I.B.7. "Component" means a part of a refrigeration system, including but not limited to condensing units, compressors, condensers, evaporators, and receivers; and all of its connections and subassemblies, without which the refrigeration system will not properly function or will be subject to failures.

I.B.8. "Cumulatively Replaced" means the addition of, or change in, multiple components within a three-year period.

I.B.9. "Date of Prohibition" means the applicable date after which the prohibition for use of HFCs in a specific end-use provided in Section I.E. goes into effect.

I.B.10. ''End-Use'' means processes or classes of specific applications within industry sectors, including but not limited to those listed in Section I.E.

I.B.11. "Flexible Polyurethane" means a non-rigid synthetic foam containing polymers created by the reaction of isocyanate and polyol, including but not limited to that used in furniture, bedding, and chair cushions.

I.B.12. "Foam" means a product with a cellular structure formed via a foaming process in a variety of materials that undergo hardening via a chemical reaction or phase transition.

I.B.13. "Foam Blowing Agent" means a substance used to produce foam.

I.B.14. "Household Refrigerators and Freezers" means refrigerators, refrigerator-freezers, freezers, and miscellaneous household refrigeration appliances intended for residential use. For the purposes of this regulation, "household refrigerators and freezers" does not include "household refrigerators and freezers - compact", or "household refrigerators and freezers - built-in."

I.B.15. “Household Refrigerators and Freezers - Compact” means any refrigerator, refrigerator-freezer or freezer intended for residential use with a total refrigerated volume of less than 7.75 cubic feet (220 liters).

I.B.16. “Household Refrigerators and Freezers - Built-In” means any refrigerator, refrigerator-freezer or freezer intended for residential use with 7.75 cubic feet or greater total volume and 24 inches or less depth not including doors, handles, and custom front panels; with sides which are not finished and not designed to be visible after installation; and that is designed, intended, and marketed exclusively to be: installed totally encased by cabinetry or panels that are attached during installation; securely fastened to adjacent cabinetry, walls or floor; and equipped with an integral factory-finished face or accept a custom front panel.

I.B.17. "Hydrofluorocarbons" or “HFC” means a class of greenhouse gases (GHGs) consisting of hydrogen, fluorine, and carbon.

I.B.18. “Integral Skin Polyurethane” means a synthetic self-skinning foam containing polyurethane polymers formed by the reaction of an isocyanate and a polyol, including but not limited to that used in car steering wheels and dashboards.

I.B.19. "Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces any product that contains or uses HFCs or is an importer or domestic distributor of such a product.

I.B.20. “Metered Dose Inhaler,” or “Medical Dose Inhaler,” or “MDI” means a device that delivers a measured amount of medication as a mist that a patient can inhale, typically used for bronchodilation to treat symptoms of asthma, chronic obstructive pulmonary disease (COPD), chronic bronchitis, emphysema, and other respiratory illnesses. An MDI consists of a pressurized canister of medication in a case with a mouthpiece.

I.B.23. “Motor-Bearing” means refrigeration equipment containing motorized parts, including compressors, condensers, and evaporators.

I.B.24. “New” means products or equipment that are manufactured after the date of prohibition or equipment first installed for an intended purpose with new or used components after the date of prohibition, expanded by the addition of components to increase system capacity after the date of prohibition, or replaced or cumulatively replaced such that the cumulative capital cost of replacement after the date of prohibition exceeds 50% of the capital cost of replacing the whole system. For the purposes of this rule, a supermarket system is considered manufactured on the date upon which the refrigerant circuit is complete, the system can function, the system holds a full refrigerant charge, and the system is ready for use for its intended purposes.

I.B.25. “Phenolic Insulation Board” means phenolic insulation including but not limited to that used for roofing and wall insulation.

I.B.26. “Polyolefin” means foam sheets and tubes made of polyolefin.

I.B.27. “Polystyrene Extruded Boardstock and Billet (XPS)” means a foam formed from predominantly styrene monomer and produced on extruding machines in the form of continuous foam slabs which can be cut and shaped into panels used for roofing, walls, and flooring.

I.B.28. “Polystyrene Extruded Sheet” means polystyrene foam including that used for packaging. It is also made into food-service items, including hinged polystyrene containers (for "take-out" from restaurants); food trays (meat and poultry) plates, bowls, and retail egg containers.

I.B.29. “Positive Displacement Chiller” means vapor compression cycle chillers that use positive displacement compressors, typically used for commercial comfort air conditioning. Positive displacement chiller in this definition is a chiller intended for comfort cooling and does not include cooling for industrial process cooling and refrigeration.

I.B.30. “Refrigerant” or “Refrigerant Gas” means any substance, including blends and mixtures, which is used for heat transfer purposes.

I.B.31. “Refrigerated Food Processing and Dispensing Equipment” means retail food refrigeration equipment that is designed to process food and beverages dispensed via a nozzle that are intended for immediate or near-immediate consumption, including but not limited to chilled and frozen beverages, ice cream, and whipped cream. This end-use excludes water coolers, or units designed solely to cool and dispense water.

I.B.32. “Refrigeration Equipment” means any stationary device that is designed to contain and use refrigerant gas, including but not limited to retail or commercial refrigeration equipment, household refrigerators and freezers, and cold storage warehouses.

I.B.33. “Remote Condensing Units” means retail refrigeration equipment or units that have a central condensing portion and may consist of compressor(s), condenser(s), and receiver(s) assembled into a single unit, which may be located external to the sales area. The condensing portion (and often other parts of the system) is located outside the space or area cooled by the evaporator. Remote condensing units are commonly installed in convenience stores, specialty shops (e.g., bakeries, butcher shops), supermarkets, restaurants, and other locations where food is stored, served, or sold.

I.B.34. “Residential Use” means use by a private individual of a substance, or a product containing the substance, in or around a permanent or temporary household, during recreation, or for any personal use or enjoyment. Use within a household for commercial or medical applications is not included in this definition, nor is use in automobiles, watercraft, or aircraft.

I.B.35. “Retail Food Refrigeration” or “Commercial Refrigeration” means equipment designed to store and display chilled or frozen goods for commercial sale including but not limited to stand-alone units, refrigerated food processing and dispensing equipment, remote condensing units, supermarket systems, and vending machines.

I.B.36. “Retrofit” means to convert a system from one refrigerant to another refrigerant. Retrofitting includes the conversion of the system to achieve system compatibility

with the new refrigerant and may include, but is not limited to, changes in lubricants, gaskets, filters, driers, valves, O-rings, or system components.

I.B.37. "Rigid Polyurethane and Polyisocyanurate Laminated Boardstock" means laminated board insulation made with polyurethane or polyisocyanurate foam, including that used for roofing and wall insulation.

I.B.38. "Rigid Polyurethane Appliance Foam" means polyurethane insulation foam in household appliances.

I.B.39. "Rigid Polyurethane Commercial Refrigeration and Sandwich Panels" means polyurethane insulation for use in walls and doors, including that used for commercial refrigeration equipment, and used in doors, including garage doors.

I.B.40. "Rigid Polyurethane High-Pressure Two-component Spray Foam" means a foam product that is sold in pressurized containers as two parts (i.e., A-side and B-side) in non-pressurized containers that are blown and applied in situ using high-pressure pumps at 800-1600 pounds per square inch (psi) and an application gun to propel the foam components, and may use liquid blowing agents without an additional propellant.

I.B.41. "Rigid Polyurethane Low-Pressure Two-Component Spray Foam" means a foam product that is sold as two parts (i.e., A-side and B-side) in containers that are pressurized to less than 250 psi that is typically applied in situ relying upon a gaseous foam blowing agent that also serves as a propellant so pumps typically are not needed.

I.B.42. "Rigid Polyurethane Marine Flotation Foam" means buoyancy or flotation foam used in boat and ship manufacturing for both structural and flotation purposes.

I.B.43. "Rigid Polyurethane Slabstock and Other" means a rigid closed-cell foam containing urethane polymers produced by the reaction of an isocyanate and a polyol and formed into slabstock insulation for panels and fabricated shapes for pipes and vessels.

I.B.44. "Stand-Alone Unit" means retail refrigerators, freezers, and reach-in coolers (either open or with doors) where all refrigeration components are integrated and the refrigeration circuit may be entirely brazed or welded. These systems are fully charged with refrigerant at the factory and typically require only an electricity supply to begin operation.

I.B.45. "Stand-Alone Low-Temperature Unit" means a stand-alone unit that maintains food or beverages at temperatures at or below 32°F (0 °C).

I.B.46. "Stand-Alone Medium-Temperature Unit" means a stand-alone unit that maintains food or beverages at temperatures above 32°F (0 °C).

I.B.47. "Substance" means any chemical intended for use in the end-uses listed in Section I.E of this regulation.

I.B.48. "Supermarket Systems" means multiplex or centralized retail food refrigeration equipment systems designed to cool or refrigerate, which typically operate with racks of compressors installed in a machinery room and which includes both direct and indirect systems.

I.B.49. "Use" means any utilization of any substance, including but not limited to utilization in a manufacturing process or product in the State of Colorado, consumption by the end-user in the State of Colorado, or in intermediate applications in the State of Colorado, such as formulation or packaging for other subsequent applications. For the purposes of this regulation, use excludes residential use, but it does not exclude manufacturing for the purpose of residential use.

I.B.50. "Vending Machine" means a self-contained unit that dispenses goods that must be kept cold or frozen.

I.C. Requirements

I.C.1. Prohibitions

I.C.1.a. No person may sell, lease, rent, install, use, or manufacture in the State of Colorado, any product or equipment using a prohibited substance for any air-conditioning, refrigeration, foam, or aerosol propellant end-use listed in Section I.E.1.

I.C.2. Exemptions.

I.C.2.a. Except where an existing system is retrofit after the date of prohibition, nothing in this regulation requires a person that acquired a product or equipment containing a prohibited substance prior to the applicable date of prohibition in Section I.E.1. to cease use of that product or equipment. Products or equipment manufactured prior to the applicable date of prohibition specified in Table 1 of Section I.E.1 (including spray foam systems not yet applied on site) may be sold, imported, exported, distributed, installed, serviced, and used after the specified date of prohibition.

I.C.2.b. End-uses that are exempted from Part B, Section I. of this regulation are provided for in Section I.E.2.

I.C.3. Alternative Compliance

I.C.3.a. This regulation does not prohibit a manufacturer of positive displacement chillers in the State of Colorado from the use of prohibited substances in Section I.E.1. provided that the manufacturer meets the following requirements:

I.C.3.a.(i) The manufacturer otherwise meets all other applicable requirements of Section I.D.

I.C.3.a.(ii) The manufacturer only uses the prohibited substances to manufacture or test positive displacement chillers designated for installation outside the State of Colorado.

I.C.3.a.(iii) The manufacturer submits a mitigation plan for emissions from prohibited substances from the manufacturing facility (including testing) to the Division no later than December 31, 2021 or prior to manufacturing or testing positive displacement chillers that use prohibited substances in the State of Colorado if no manufacturing or testing occurred on or before December 31, 2021. The plan must be approved by the Division and include:

I.C.3.a.(iii)(A) Details of emission mitigation efforts whether planned or implemented at the manufacturing facility, including dates of completion for any planned efforts.

I.C.3.a.(iii)(B) Projections of annual emissions from prohibited substances from the manufacturing facility, including emissions associated with manufacturing and testing, covering at least ten (10) calendar years from the date the plan is submitted.

I.C.3.a.(iv) The manufacturer must report actual emissions from prohibited substances to the Division on an annual basis for the prior calendar year no later than March 31 after the calendar year ends.

I.C.3.a.(iv)(A) For manufacturers producing or testing positive displacement chillers in the State of Colorado on or before December 31, 2021, the first emissions report is due March 31, 2023 for calendar year 2022.

I.C.3.a.(iv)(B) For manufacturers that first produce or test positive displacement chillers in the State of Colorado after December 31, 2021, the first emissions report is due March 31 following the first calendar year during which any emissions from prohibited substances occurred.

I.C.3.a.(iv)(C) Annual emissions reporting must continue until the manufacturer has fully transitioned from use of prohibited substances for positive displacement chillers listed in Section I.E.1.

I.C.3.a.(iv)(D) Emissions must be reported in metric tons for each prohibited substance.

I.C.3.a.(v) The manufacturer must complete project(s) within the State of Colorado that reduce greenhouse gas emissions by an amount equal to or greater than any projected annual carbon dioxide equivalent (CO2e) emissions not reduced for calendar years 2024 and beyond as part of the emissions mitigation plan identified in Section I.C.3.a.(iii).

I.C.3.a.(v)(A) Proposals for projects required under this section may be submitted as part of the emissions mitigation plan but must be submitted no later than one (1) year after approval of the mitigation plan and must be approved by the Division prior to execution.

I.C.3.a.(v)(B) Emission reductions from approved project(s) may be applied to multiple calendar years of unmitigated emissions when the projected reductions are greater than the projected unmitigated emissions on a CO2e basis.

I.C.3.a.(v)(C) A completion report for each project must be submitted to the Division no later than ninety (90) days after the project is completed and must include the details of project work completed, the amount of CO2e emissions reduced or avoided over the lifetime of the project, and any estimated benefits or co-benefits to the environment and community in which the project is located.

I.D. Disclosure Statement and Recordkeeping

I.D.1. Disclosure Statement

I.D.1.a. Any person who manufactures or sells in the State of Colorado a product or equipment in the air-conditioning, refrigeration, foam, or aerosol propellant end-uses listed in Section I.E.1., must provide a written disclosure to the buyer as part of the sales transaction and invoice or a label on the product or equipment as of the applicable date of prohibition for the end-use in Section I.E.1.

I.D.1.a.(i) For motor-bearing refrigeration and air-conditioning equipment that is not factory-charged or pre-charged with refrigerant, the disclosure or label must state: “This equipment is prohibited from using any substance on the “List of Prohibited Substances” for that specific end-use, in accordance with State regulations for hydrofluorocarbons.”

I.D.1.a.(ii) Except for products and equipment with existing labeling required by state or local building codes and safety standards which contain the information required in this Section I.D.2.a.ii., the disclosure or label for refrigeration and air-conditioning equipment that are factory-charged or pre-charged with an HFC or HFC blend must include the date of manufacture and the refrigerant and foam blowing agent the product or equipment contains.

I.D.1.a.(iii) For foam, the disclosure or label must include the date of manufacture and hydrofluorocarbon the product contains or the hydrofluorocarbon used to make the product. Alternatively, the disclosure or label may state: “Where sold, compliant with State HFC regulations.”

I.D.1.a.(iv) For aerosol propellant products, the disclosure or label must include the date of manufacture and the hydrofluorocarbon the product contains or the hydrofluorocarbon used to make the product. Alternatively, the disclosure requirement may be met if the hydrofluorocarbon the product contains or the hydrofluorocarbon used to make the product is listed in a Safety Data Sheet for the product that complies with the requirements of 29 CFR 1910.1200 (effective February 8, 2013).

I.D.2. Recordkeeping

I.D.2.a. Any person who manufactures any product or equipment in the end uses listed in Section I.E.1. for sale or entry into commerce in the State of Colorado must maintain records sufficient to demonstrate that the product or equipment does not contain applicable prohibited substances listed in Section I.E.1. as of the date of prohibition for that end-use or that the product or equipment is exempt in accordance with Section I.E.2.

I.D.2.b. Records must be maintained for five (5) years and made available to the Division upon request.

I.E. List of Prohibited Substances and Exemptions

I.E.1. Table 1 lists prohibited substances in specific end-uses and the date of prohibition for each end-use, unless an exemption is provided for in Section I.E.2.

Table 1: End-Use, Prohibited Substances, and Date of Prohibition

End-Use Category: Aerosol Propellants		
End-Use	Prohibited Substances	Date of Prohibition
Aerosol Propellants	HFC-125, HFC-134a, HFC-227ea and blends of HFC-227ea and HFC-134a	January 1, 2021
End-Use Category: Air Conditioning		
End-Use	Prohibited Substances	Date of Prohibition

Centrifugal Chillers (New)	FOR12A, FOR12B, HFC-134a, HFC-227ea, HFC-236fa, HFC245fa, R-125/ 134a/ 600a (28.1/70/1.9), R-125/ 290/ 134a/ 600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-410A, R-410B, R-417A, R-421A, R-422B, R-422C, R-422D, R-423A, R-424A, R-434A, R438A, R-507A, RS-44 (2003 composition), THR-03	January 1, 2024
Positive Displacement Chillers (New)	FOR12A, FOR12B, HFC-134a, HFC-227ea, KDD6, R125/ 134a/ 600a (28.1/70/1.9), R-125/ 290/ 134a/ 600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-410A, R-410B, R-417A, R-421A, R-422B, R-422C, R-422D, R-424A, R-434A, R-437A, R438A, R-507A, RS-44 (2003 composition), SP34E, THR-03	January 1, 2024
End-Use Category: Refrigeration		
End-Use	Prohibited Substances	Date of Prohibition
Cold Storage Warehouses (New)	HFC-227ea, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R404A, R-407A, R-407B, R-410A, R-410B, R-417A, R-421A, R421B, R-422A, R-422B, R-422C, R-422D, R-423A, R-424A, R428A, R-434A, R-438A, R-507A, RS-44 (2003 composition)	January 1, 2023
Household Refrigerators and Freezers (New)	FOR12A, FOR12B, HFC-134a, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R424A, R-426A, R-428A, R-434A, R-437A, R-438A, R-507A, RS24 (2002 formulation), RS-44 (2003 formulation), SP34E, THR-03	January 1, 2022
Household Refrigerators and Freezers—Compact (New)	FOR12A, FOR12B, HFC-134a, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R424A, R-426A, R-428A, R-434A, R-437A, R-438A, R-507A, RS24 (2002 formulation), RS-44 (2003 formulation), SP34E, THR-03	January 1, 2021
Household Refrigerators and Freezers—Built-in (New)	FOR12A, FOR12B, HFC-134a, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R424A, R-426A, R-428A, R-434A, R-437A, R-438A, R-507A, RS24 (2002 formulation), RS-44 (2003 formulation), SP34E, THR-03	January 1, 2023
Supermarket Systems (Retrofit)	R-404A, R-407B, R-421B, R-422A, R-422C, R-422D, R428A, R-434A, R-507A	January 1, 2021

Supermarket Systems (New)	HFC-227ea, R-404A, R-407B, R-421B, R-422A, R-422C, R-422D, R-428A, R-434A, R-507A	January 1, 2021
Remote Condensing Units (Retrofit)	R-404A, R-407B, R-421B, R-422A, R-422C, R-422D, R428A, R-434A, R-507A	January 1, 2021
Remote Condensing Units (New)	HFC-227ea, R-404A, R-407B, R-421B, R-422A, R-422C, R-422D, R-428A, R-434A, R-507A	January 1, 2021
Stand-alone Units (Retrofit)	R-404A, R-507A	January 1, 2021
Stand-alone Medium-Temperature Units (New)	FOR12A, FOR12B, HFC-134a, HFC-227ea, KDD6, R125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R407A, R-407B, R-407C, R-407F, R-410A, R-410B, R417A, R-421A, R-421B, R-422A, R-422B, R-422C, R422D, R-424A, R-426A, R-428A, R-434A, R-437A, R438A, R-507A, RS-24 (2002 formulation), RS-44 (2003 formulation), SP34E, THR-03	January 1, 2021
Stand-alone Low-Temperature Units (New)	HFC-227ea, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407A, R-407B, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R422A, R-422B, R-422C, R-422D, R-424A, R-428A, R434A, R-437A, R-438A, R-507A, RS-44 (2003 formulation)	January 1, 2021
Refrigerated Food Processing and Dispensing Equipment (New)	HFC-227ea, KDD6, R-125/ 290/ 134a/ 600a (55.0/1.0/42.5/1.5), R-404A, R-407A, R-407B, R-407C, R-407F, R-410A, R-410B, R417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R424A, R-428A, R-434A, R-437A, R-438A, R-507A, RS-44 (2003 formulation)	January 1, 2021
Vending Machines (New)	FOR12A, FOR12B, HFC-134a, KDD6, R125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R407C, R-410A, R-410B, R-417A, R-421A, R-422B, R422C, R-422D, R-426A, R-437A, R-438A, R-507A, RS-24 (2002 formulation), SP34E	January 1, 2022
Vending Machines (Retrofit)	R-404A, R-507A	January 1, 2021

End-Use Category: Foams		
End-Use	Prohibited Substances	Date of Prohibition
Rigid Polyurethane and Polyisocyanurate Laminated Boardstock	HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof	January 1, 2021
Flexible Polyurethane	HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof	January 1, 2021
Integral Skin Polyurethane	HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof; Formacel TI, Formacel Z-6	January 1, 2021
Polystyrene Extruded Sheet	HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof; Formacel TI, Formacel Z-6	January 1, 2021
Phenolic Insulation Board and Bunstock	HFC-143a, HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof	January 1, 2021
Rigid Polyurethane Slabstock and Other	HFC-134a, HFC-245fa, HFC-365mfc and blends thereof; Formacel TI, Formacel Z-6	January 1, 2021
Rigid Polyurethane Appliance Foam	HFC-134a, HFC-245fa, HFC-365mfc and blends thereof; Formacel TI, Formacel Z-6	January 1, 2021
Rigid Polyurethane Commercial Refrigeration and Sandwich Panels	HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof; Formacel TI, Formacel Z-6	January 1, 2021
Polyolefin	HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof; Formacel TI, Formacel Z-6	January 1, 2021

Rigid Polyurethane Marine Flotation Foam	HFC-134a, HFC-245fa, HFC-365mfc and blends thereof; Formacel TI, Formacel Z-6	January 1, 2021
Polystyrene Extruded Boardstock and Billet (XPS)	HFC-134a, HFC-245fa, HFC-365mfc, and blends thereof; Formacel TI, Formacel B, Formacel Z-6	January 1, 2021
Rigid Polyurethane High-pressure Two-component Spray Foam	HFC-134a, HFC-245fa, and blends thereof; blends of HFC365mfc with at least 4 percent HFC-245fa, and commercial blends of HFC-365mfc with 7 to 13 percent HFC-227ea and the remainder HFC-365mfc; Formacel TI	January 1, 2021
Rigid Polyurethane Low-pressure Two-component Spray Foam	HFC-134a, HFC-245fa, and blends thereof; blends of HFC365mfc with at least 4 percent HFC-245fa, and commercial blends of HFC-365mfc with 7 to 13 percent HFC-227ea and the remainder HFC-365mfc; Formacel TI	January 1, 2021
Rigid Polyurethane One-component foam sealants	HFC-134a, HFC-245fa, and blends thereof; blends of HFC365mfc with at least 4 percent HFC-245fa, and commercial blends of HFC-365mfc with 7 to 13 percent HFC-227ea and the remainder HFC-365mfc; Formacel TI	January 1, 2021

I.E.2. Table 2 lists exemptions to the prohibitions in Section I.E.1.

Table 2: Exemptions.

End-Use Category	Prohibited Substances	Acceptable Uses
Aerosol Propellants	HFC-134a	Cleaning products for removal of grease, flux and other soils from electrical equipment; refrigerant flushes; products for sensitivity testing of smoke detectors; lubricants and freeze sprays for electrical equipment or electronics; sprays for aircraft maintenance; sprays containing corrosion preventive compounds used in the maintenance of aircraft, electrical equipment or electronics, or military equipment; pesticides for use near electrical wires, in aircraft, in total release insecticide foggers, or in certified organic use pesticides for which EPA has specifically disallowed all other lower-GWP propellants; mold release agents and mold cleaners; lubricants and cleaners for spinnerettes for synthetic fabrics; duster sprays specifically for removal of dust from photographic negatives, semiconductor chips, specimens under electron microscopes, and energized electrical equipment; adhesives and sealants in large canisters; document preservation

		sprays; U.S. Food and Drug Administration (FDA)-approved MDIs for medical purposes; wound care sprays; topical coolant sprays for pain relief; products for removing bandage adhesives from skin; bear spray; and law enforcement pepper spray.
Aerosol Propellants	HFC-227ea and blends of HFC-227ea and HFC-134a	FDA-approved MDIs for medical purposes.
Air Conditioning	HFC–134a	Military marine vessels where reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements.
Air Conditioning	HFC-134a and R-404A	Human-rated spacecraft and related support equipment where reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements.
Foams – Except Rigid polyurethane spray foam	All substances	Military applications where reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements until January 1, 2022.
Foams – Except Rigid polyurethane spray foam	All substances	Space- and aeronautics-related applications where reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements until January 1, 2025.
Rigid polyurethane two-component spray foam	All substances	Military or space- and aeronautics-related applications where reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements until January 1, 2025.

II. Greenhouse Gas Emissions and Energy Management for the Manufacturing Sector in Colorado

II.A. Purpose and Applicability

II.A.1. The purpose of this regulation is to evaluate greenhouse gas (GHG) emissions and energy efficiency from certain stationary sources within Colorado's industrial manufacturing sector and implement best practices for reducing GHG emissions and increasing energy efficiency.

II.A.2. This regulation applies to all energy-intensive, trade-exposed manufacturing stationary sources (EITE stationary sources) in Colorado, with reported direct GHG emissions equal to or greater than 50,000 metric tons of carbon dioxide equivalent per year.

II.A.3. The final audit shall be completed in year 2037, with reductions sustained thereafter.

II.B. Definitions

II.B.1. "Additional" means GHG emission reductions that exceed any GHG emission reductions otherwise required by law, regulation or legally binding mandate.

II.B.2. "Annual emissions" means the EITE stationary source's direct GHG emissions for a specific calendar year, reported under Regulation Number 22.

II.B.3. "Annual emissions limitation" means the number of metric tons CO2e an EITE stationary source may emit as calculated in Section II.E.

II.B.4. "Alternate account representative" means an individual designated pursuant to II.I.3 to take actions on an EITE stationary source' accounts.

II.B.5. "Audit plan" means the proposed audit scope, timelines and team submitted by the EITE stationary source to the Division for approval.

II.B.6. "Audit report" means the resulting document from the audit containing all the information and data required under Section II.C.3.

II.B.7. "Audit scope" means the GHG emission units and the energy consumption sources included in the energy and emissions control audit and identified in the approved audit plan.

II.B.8. "Audit team" means one or more persons performing the audit. The audit team must consist of at least one qualified third-party auditor. Additional capabilities and knowledge of the audit team must include, but are not limited to, technical expertise with specific operating and maintenance practices for the industry being audited; expertise in conducting GHG and energy management system audits; and expertise of the EITE stationary source's domestic and international market. The audit team must include individual(s) with documented audit expertise in the relevant industrial sector.

II.B.8.a. A bachelor's level college degree or equivalent in science, technology, business, statistics, math, environmental policy, economic, or financial auditing; or evidence demonstrating completion of significant and relevant work experience or other personal development activities that have provided the applicant with the communication, technical, and analytical skills to conduct audit; and

II.B.8.b. Sufficient workplace experience to act as an auditor, including a minimum two years of full-time experience in a professional role that involved emissions data management, emissions technology, emissions inventories, environmental auditing or other technical skills necessary to conduct the audit.

II.B.9. "Carbon dioxide equivalent" (CO_2e) means a metric used to compare the emissions from various GHG classes based upon their global warming potential (GWP). The CO_2e is determined by multiplying the mass amount of emissions (metric tons per year), for each GHG constituent by that gas's GWP, and summing the resultant values to determine CO_2e (metric tons per year).

II.B.10. "Certification body" means a professional organization that has been accredited for a specific sector and can provide compliance certificates.

II.B.11. "Co-benefits" means the additional benefits associated with the reduction of harmful air pollutants to local communities, including localized air quality benefits.

II.B.12. "Compliance account" means an account created by the Division or its agent for an EITE stationary source to which the Division and/or the EITE stationary source transfers GHG credits to meet its compliance obligations.

II.B.13. "Direct GHG emissions" means GHG emissions from an EITE stationary source that are reported to the State of Colorado under Regulation Number 22, Part A and/or 40 CFR Part 98.

II.B.14. "Disproportionately impacted community" means those communities that meet the definition contained in § 24-4-109(2)(b)(II), C.R.S.

II.B.15. "Energy and GHG emission control audit" (the audit) means a rigorous examination of the GHG emissions and energy consumption of an EITE stationary source with the goal of analyzing and recommending GHG BAECT and energy BMPs, and identifying opportunities for reduction in GHG emissions and energy consumption for the facility, conducted consistent with the requirements set forth in this section.

II.B.16. "Energy best management practices" (energy BMPs) means the best energy efficiency practices available to the EITE stationary source, based on the maximum degree of energy efficiency that is achievable on a case-by-case basis, taking into account energy, environmental, and economic impacts, and is achievable for such facility through application of production process improvements and available equipment or process control methods, systems, and techniques, and includes incorporating all the key elements of SEM, such that the facility continually improves its energy performance, reduces energy costs, and reduces GHG emissions associated with energy use.

II.B.17. "Energy efficiency" means using less electricity or fuel to produce the same quantity of product or service.

II.B.18. "Energy-intensive, trade-exposed manufacturing stationary source" (EITE stationary source) means a source that principally engages in cement and concrete product manufacturing, NAICS code 3273; foundries, NAICS code 3315; iron and steel mills and ferroalloy manufacturing, NAICS code 3311; and/or pulp, paper, and paperboard mills, NAICS code 3221.

II.B.19. "Federal Energy Star Program" means the U.S. Environmental Protection Agency's voluntary program for industrial manufacturers through which specific energy performance indicators are measured and compared across industries and to which facilities are certified if they are achieving an Energy Star scoring of 75 or greater. The Federal Energy Star Program requirements (August 31, 2021) are hereby incorporated by reference.

II.B.20. "Greenhouse gas best available emission control technology" (GHG BAECT) means a GHG emission control technology for a GHG emission unit based on the maximum degree of GHG reductions achievable on a case-by-case basis, taking into account energy, environmental, and economic impacts, employment of which is demonstrated by compliance with the GHG BAECT and energy BMP intensity rate determination.

II.B.21 "GHG BAECT and energy BMP intensity rate" means the total direct GHG emissions per unit of production from the emissions units within the audit scope after GHG BAECT and energy BMPs are operational as determined in Section II.D.1.b.(iv).

II.B.22. "GHG credit" means a tradable compliance instrument issued pursuant to Sections II.F.1.a.(ii) that represents a GHG emission reduction from an EITE stationary source of one metric ton of CO2e. The GHG credit must be real, additional, quantifiable, permanent, verifiable and enforceable. When issuing a GHG credit, the Division shall assign each credit an identifier that is unique.

II.B.23. "Harmful air pollutant" as used in this section means pollutants designated by EPA as criteria air pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate pollution (PM) (PM2.5 and PM10) and sulfur dioxide) or hazardous air pollutants.

II.B.24. "International Organization of Standardization" (ISO) means the independent, non-governmental international standard-setting body composed of representatives from various national standards organizations.

II.B.25. "ISO 50001: Energy Management Systems – Requirements with guidance for use" (ISO 50001) means the internationally accepted standard which specifies the requirements for an organization to demonstrate that it has a sustainable energy management system in place, has completed the energy planning process, and has a commitment to continual improvement of its energy performance. The ISO 50001:2018 Energy Management Systems – Requirements with guidance for use is hereby incorporated by reference.

II.B.26. "Lead auditor" means an individual who has met the requirements of and is certified as a lead auditor through a professional certification body.

II.B.27. "Management system" means the policies, processes, and procedures used by an organization to ensure that it can fulfill the tasks required to achieve its GHG emissions or energy management objectives.

II.B.28. "Net meter" means a renewable energy resource or renewable energy storage on the EITE stationary source's property which supply energy directly to the EITE stationary source's energy provider in exchange for a Power Purchase Agreement where the customer receives credit for the energy production.

II.B.29. "Non-GHG BAECT emissions" means the GHG mass emissions from an EITE stationary source that are not covered by the audit.

II.B.30. "North American industry classification system (NAICS) code(s)" means the six-digit code(s) that represents the product(s)/activity(s)/service(s) at a facility or supplier as listed in the Federal Register and defined in "North American Industrial Classification System Manual 2007," available from the U.S. Department of Commerce, National Technical Information Service, Alexandria, VA 22312 (as published August, 2021).

II.B.31. "Permanent" means the GHG emission reductions are not reversible, or, when the GHG emission reductions are reversible, that mechanisms are in place to replace any reversed emission reductions to ensure that all reductions that are awarded GHG credits endure.

II.B.32. "Plain-language" means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and is easily understandable.

II.B.33. "Primary account representative" means an individual authorized by an EITE stationary source to make submissions to the Division or its agent in all matters pertaining to this Part that legally bind the authorizing source.

II.B.34. "Process" means a specific operation at an EITE stationary source comprising a series of actions or steps which are carried out in a specific order to complete a particular stage in the manufacturing process.

II.B.35. "Product" means the quantifiable material output of an individual manufacturing process or manufacturing facility.

II.B.36. "Proof of certification" means an official document issued by the formal registrar or certifying body stating the scope of certification, the expiration date and the standards to which the stationary source is certified.

II.B.37. "Qualified third-party auditor" means one or more individuals who hold a valid lead auditor certification in greenhouse gas and/or energy management systems and have demonstrated capabilities to evaluate GHG reduction opportunities for large, energy-intensive, industrial manufacturing processes and facilities. Qualified third-party auditors must have worked as an auditor for at least two years, or must have worked as a project manager or lead person for not less than four years (two of which may be graduate level work) in: (1) the development of GHG or other air emission inventories, or (2) as a lead environmental data or financial auditor.

The individual must not be affiliated with the EITE stationary source, its subsidiaries, or related entities; there can be no common ownership between the

EITE stationary source and the third-party auditor. Capabilities and knowledge of the auditor include, but are not limited to, background, experience, and recognized abilities to perform the assessment activities, data analysis, and report preparation and experience lead auditing GHG or energy management systems for the industry subject to this section.

II.B.38. "RACT/BACT/LAER Clearinghouse" (RBLC) means EPA's central database of air pollution technology information, including past RACT, BACT, and LAER decisions contained in New Source Review (NSR) permits, to promote the sharing of information among permitting agencies and to aid in future case-by-case determinations.

II.B.39. "Real" means that GHG emission reductions result from a demonstrable action or set of actions and are quantified using appropriate, accurate, and conservative methodologies that account for all GHG emission sources within the boundary of the regulated source generating GHG credits and account for uncertainty and activity-shifting leakage and market-shifting leakage.

II.B.40. "Regulated source" means a source of greenhouse gas that is subject to a rule adopted by the Commission under Section 105(1)(e) of the Act that imposes specific and quantifiable greenhouse gas reduction obligations upon that source or group of sources.

II.B.41. "Retail distributed generation" means a renewable energy resource or renewable energy storage that directly supply building or process energy needs at a metered location, where surplus energy is supplied to the location's energy provider when energy production is greater than on-site demand and grid energy is supplied through a customer meter to the location during times when on-site production is less than demand.

II.B.42. "Social cost of greenhouse gases" means the monetized damages associated with an incremental increase in carbon emissions in a given year. The social cost of greenhouse gases must include use of a discount rate of not more than two and a half percent; except that the social cost of greenhouse gases that is used may not be lower than that established in 2016, using a two and one-half percent discount rate, by the Federal Interagency Working Group on the social cost of greenhouse gases or than the final social cost of greenhouse gases, using a two and one-half percent or lower effective discount rate, established by the Federal Interagency Working Group on the social cost of greenhouse gases pursuant to Federal Executive Order 13990, dated January 20, 2021, whichever is higher.

II.B.43. "Strategic energy management" (SEM) means a management system-based, continuous improvement approach to energy management that seeks to improve an organization's energy performance, reduce energy costs, and reduce GHG emissions associated with energy use; drives improvement in facility energy efficiency through equipment upgrades and through operations and maintenance improvements and behavioral changes.

II.B.44. "Tracking and accounting system" means a GHG credit tracking system designated by the Division where GHG credits are issued, traded and retired by the Division or its agent.

II.B.45. "Transfer" of a GHG credit means the removal of a GHG credit from one account and placement into another account.

II.B.46. "Transfer request" means the communication by an authorized account representative or an alternate authorized account representative to the Division or its agent to transfer allowances between accounts.

II.B.47. "Verifiable" means that a reported emission reduction resulting from a GHG credit at a regulated source is well documented and transparent such that it lends itself to an objective review by the Division to verify the emission reduction is real, using monitoring of emissions reductions relative to the baseline.

II.C. Energy-Intensive Trade-Exposed Stationary Source Audit Requirements

II.C.1. Energy and GHG Emission Control Audits

II.C.1.a. By December 31, 2022, and December 31 every five years thereafter, owners or operators of each EITE stationary source must conduct energy and GHG emission control audits to establish greenhouse gas best available emission control technology (GHG BAECT) and energy best management practices (energy BMPs) and determine whether the stationary source is employing GHG BAECT and energy BMPs at the EITE stationary source, and submit the audit report to the Division.

II.C.1.b. Each EITE stationary source must conduct an audit within twelve (12) months of reporting direct GHG emissions of 50,000 metrics tons CO2e per year under Regulation Number 22, Part A and/or 40 CFR Part 98 and every five years thereafter.

II.C.1.c. Audits must be conducted by a qualified third party auditor and meet or exceed nationally or internationally accepted energy and GHG accounting and management audit standards or protocols.

II.C.2. Audit Plan

II.C.2.a. Each EITE stationary source must submit an audit plan to the Division for approval at least 120 days prior to beginning the audit as required in Section II.C.1. The Division will review the audit plan and notify the EITE stationary source within 60 days of submission of any deficiencies. If notified of deficiencies, the EITE stationary source must submit a revised audit plan for final approval no later than 30 days prior to beginning the audit. The EITE stationary source must receive approval from the Division of the audit plan prior to beginning the audit. Such approval shall not be unreasonably withheld. The audit plan must include:

II.C.2.a.(i) A description of all the emission units at the EITE stationary source that directly release one or more GHGs, ordered from largest emitting to smallest emitting emission units averaged over the past 5 years, quantified in CO2e as well as broken out by GHG type. Using this list, the emission units that comprise at least the top 80% of the EITE stationary source's direct GHG emissions shall be identified, documented and included in the GHG emissions audit scope. Additionally, any individual emissions unit that comprises 2% or more of the EITE stationary source's direct GHG emissions shall be identified, documented and included in the GHG emissions audit scope.

II.C.2.a.(ii) Unless the EITE stationary source is utilizing Section II.C.2.a.(iii) to show employment of energy BMPs, a description of all the emission units at the EITE stationary source that consume energy, averaged over the past five (5) years and ordered from largest consuming to smallest consuming. Using this list, the energy consumption sources that comprise the top 80% of the EITE stationary source's energy consumption shall be identified, documented and included in the energy audit scope.

II.C.2.a.(iii) If an EITE stationary source is certified to the Federal Energy Star Program or ISO 50001, the EITE stationary source will be determined to be employing energy BMPs and the energy audit will be limited in scope. Proof of certification of the EITE stationary source to one or more of these existing standards must be included in the audit plan to utilize this option.

II.C.2.a.(iii)(1) If an EITE stationary source is planning on becoming certified to one of these standards, the EITE stationary source must submit the certification or registration timeline or plan, including key milestones towards certification or registration with certification scheduled for no more than 12 months after the audit date.

II.C.2.a.(iv) Records of any previous third-party audit results that the EITE stationary source proposes to use to support the audit on a supplementary basis or to avoid duplication of data collection efforts that have been performed within three (3) years prior to the planned audit date. To be accepted, supplementary audit data must be verified and validated by a third party and result from an audit that meets or exceeds nationally or internationally accepted energy and GHG accounting audit standards or protocols.

II.C.2.a.(v) A description of the audit team members, including experience, qualifications, and role in the audit, and existing or previous business relationship, and the nature of such relationship with the owner or operator of the EITE stationary source. If there is an existing or previous business relationship, a list and description of work done for the owner or operator of the EITE stationary source.

II.C.2.a.(v)(A) The Division may reject a proposed qualified third-party auditor or audit team if it does not meet the qualifications in Sections II.B.8. and II.B.37., failed to conduct a previous audit to the satisfaction of the Division, or is deemed to have a previous or existing relationship with the source that is so pervasive that the auditor would be unable to conduct the audit in an unbiased and independent manner.

II.C.2.a.(vi) The specific GHG and/or energy audit standards, protocols or procedures to be used for conducting the audit, if applicable.

II.C.3. Audit Reports

II.C.3.a. Each EITE stationary source must complete the audit report in accordance with Sections II.C.3.a.(i). through II.C.3.a.(v) and submit the audit report to the Division by December 31 of the audit year that includes the following elements for all GHG emission units listed in accordance with Section II.C.2.a. and specified in the Division-approved audit plan, at a minimum.

II.C.3.a.(i) The GHG BAECT analysis. The audit team must analyze GHG BAECT as follows:

II.C.3.a.(i)(A) Identify all available control technologies and strategies with practical potential for application to reduce GHG emissions from the GHG emission units included in the audit scope. Identify the current GHG emissions rate of each audited emission unit at the time of the audit.

II.C.3.a.(i)(A)(1) Control technologies and strategies must include, but are not limited to, fuel use, raw material use, energy efficiency improvements, preheating/heat reuse and strategic energy management options), and carbon capture and underground storage or utilization.

II.C.3.a.(i)(B) Eliminate technically infeasible control technologies and strategies.

II.C.3.a.(i)(B)(1) Notwithstanding Section II.C.3.a.(i)(B), the audit team must perform a feasibility assessment of carbon capture and underground storage or utilization technology for any single emissions unit evaluated with direct emissions of 100,000 tons per year or greater CO2e in any of the previous five years as reported under Regulation Number 22, Part A and/or 40 CFR Part 98. The audit team shall include this analysis in the audit report.

II.C.3.a.(i)(C) Rank remaining emission unit control technologies and strategies in descending order based on the reduction in direct GHG emissions per ton of product or output.

II.C.3.a.(i)(D) Perform a cost-effectiveness analysis on all control technologies and strategies for the emissions unit considering the full lifetime of the equipment. The cost-effectiveness analysis must include an estimate of the net levelized cost per ton of GHG emission reductions ($/ton CO2e) over the life of each proposed control method. The audit team must document in the audit report the discount rate, which is of no more than 8%, used for the cost-effectiveness analysis. The net levelized cost analysis should include, but is not necessarily limited to, the following costs and benefits:

II.C.3.a.(i)(D)(1) Engineering and design costs;

II.C.3.a.(i)(D)(2) Equipment costs, including installation;

II.C.3.a.(i)(D)(3) Available tax credits and/or incentive programs; and

II.C.3.a.(i)(D)(4) Changes in the annual costs resulting from the control technology/method including energy costs, operations and maintenance costs, and changes to productivity and/or product quality.

II.C.3.a.(i)(E) Eliminate cost-prohibitive GHG reduction measures considered. GHG reduction measures with a cost-effectiveness of equal to or less than the social cost of GHGs cannot be eliminated as cost-prohibitive, except for a demonstrated, unreasonable burden on competitiveness as analyzed in Section II.C.3.a.(i)(F).

II.C.3.a.(i)(F) Consider the economic, energy, and environmental impacts arising from each option under consideration. In this case, economic reasonableness includes an analysis of the economic impact of the emission unit control option on the EITE stationary source's competitiveness within the marketplace. The audit team must document these determinations and associated analyses in the audit report.

II.C.3.a.(i)(G) Additional required documentation for all control technologies and strategies must include, but are not limited to, overall implementation cost, control efficiency, remaining useful life of the equipment, impacts to land use approvals, and a quantification of any co-benefits. The level of analysis conducted and documented shall consider the nature of the GHG BAECT measure and potential impacts of these additional criteria.

II.C.3.a.(i)(H) The GHG BAECT analysis may reference recently permitted GHG best available control technologies (BACT), operational or process limits in the EITE stationary source's air pollution permits or in the RACT/BACT/LAER Clearinghouse for similar operations as applicable.

II.C.3.a.(ii) The energy BMP analysis.

II.C.3.a.(ii)(A) Unless the EITE stationary source successfully demonstrates that it currently employs energy BMPs pursuant to Section II.C.3.a.(ii)(B) or (C) and provides the requisite supporting information pursuant to Sections II.C.3.a.(ii)(B)(1) and (2) or II.C.3.a.(ii)(C)(1) to II.C.3.a.(ii)(C)(3), the audit team must analyze energy BMPs as follows:

II.C.3.a.(ii)(A)(1) Identify all available energy efficiency measures for the specific energy consumption sources included in the audit scope. Any energy efficiency measure considered to be a GHG BAECT option but not recommended as GHG BAECT must be included in the energy BMP analysis for that GHG emission unit, as applicable. This analysis can exclude any control technologies that redefine the stationary source.

II.C.3.a.(ii)(A)(2) Eliminate technically infeasible energy efficiency measures.

II.C.3.a.(ii)(A)(3) Rank remaining energy efficiency measures based on the reduction in energy use per ton of final product manufactured at the facility.

II.C.3.a.(ii)(A)(4) Perform a cost-effectiveness analysis on all energy efficiency measures considering the full lifetime of the measure. The cost-effectiveness analysis must include an estimate of the net levelized cost per energy consumption reduction over the life of the equipment. The audit team must document in the audit report the discount rate, which is of no more than 8%, used for the cost-effectiveness analysis. The net levelized cost analysis should include, but is not necessarily limited to, the following costs and benefits:

- II.C.3.a.(ii)(A)(4)(a) Engineering and design costs;
- II.C.3.a.(ii)(A)(4)(b) Equipment costs including installation;
- II.C.3.a.(ii)(A)(4)(c) Available tax credits and/or incentive programs; and
- II.C.3.a.(ii)(A)(4)(d) Changes in the following annual costs resulting from the control technology/method including energy costs, operations and maintenance costs, and changes to productivity and/or product quality.

II.C.3.a.(ii)(A)(5) Eliminate cost-prohibitive energy efficiency measures considered. Energy efficiency measures with a cost-effectiveness equal to or under the social cost of GHGs cannot be eliminated as cost-prohibitive, except for a demonstrated, unreasonable burden on competitiveness shown in Section II.C.3.a.(ii)(A)(6).

II.C.3.a.(ii)(A)(6) Consider the economic, energy, and environmental impacts arising from each measure remaining under consideration. In this case, economic reasonableness includes an analysis of the economic impact of the measure on the EITE stationary source's competitiveness within the marketplace. The audit team must document these determinations and associated analyses in the audit report.

II.C.3.a.(ii)(A)(7) Additional required documentation for all analyzed measures include, but are not limited to, cost-effectiveness, remaining useful life of the equipment, impacts to land use approvals and any co-benefits. The level of analysis conducted and documented shall consider the nature of the energy efficiency measure and potential impacts of these additional criteria.

II.C.3.a.(ii)(B) In lieu of performing the energy BMP analysis, certification within 12 months of the audit date under the annual Federal Energy Star Program will be determined as employment of energy BMPs for the EITE stationary source. Annual Energy Star certification documentation for all years subsequent to the previous audit as well as the current certification must be included in the audit report and contain:

II.C.3.a.(ii)(B)(1) Specific BMP energy efficiency measures the EITE stationary source used to achieve the Federal Energy Star Program certification; and

II.C.3.a.(ii)(B)(2) The annual Energy Performance Indicator (EPI) benchmarking spreadsheet demonstrating a score of 75 or higher submitted with the Energy Star application.

II.C.3.a.(ii)(C) In lieu of performing the energy BMP analysis, registration to ISO 50001 within 12 months of the audit date will be determined as employment of energy BMPs for the EITE stationary source. Management system documentation must be included in the audit report and contain:

II.C.3.a.(ii)(C)(1) Specific BMP energy efficiency measures the EITE stationary source used to achieve the ISO 50001 Program certification;

II.C.3.a.(ii)(C)(2) Information on the energy management system including the Manual, Objectives and Goals, Energy Policy and results of the most recent energy management system audit; and

II.C.3.a.(ii)(C)(3) The valid registration certificate.

II.C.3.a.(ii)(D). If an EITE stationary source fails to achieve the annual certification by the EPA Energy Star Program or registration to ISO 50001, the source must submit a compliance action plan to the Division within 90 days of the certification or registration expiration. The plan must include the EITE stationary source's plan and timeline to implement energy BMPs to either reacquire certification in the EPA Energy Star Program, reacquire ISO 50001 registration, or comply with the requirements in Section II.C.3.a.(ii)(A). The energy BMPs must be achieved within twelve months after the compliance action plan is approved by the Division.

II.C.3.a.(iii) The GHG BAECT and energy BMP recommendation.

II.C.3.a.(iii)(A) The GHG BAECT recommendation will include:

II.C.3.a.(iii)(A)(1) Recommendations on the most effective direct GHG emissions control technology and strategy, or suite of technologies and strategies, for the GHG emissions unit analyzed as GHG BAECT;

II.C.3.a.(iii)(A)(2) A list of emissions control measures with a levelized cost less than or equal to $0; and

II.C.3.a.(iii)(A)(3) Recommendations on GHG BAECT options that provide greater co-benefits to the surrounding communities where the top emission unit control technologies or strategies are comparable in terms of cost-effectiveness.

II.C.3.a.(iii)(A)(4) A calculation of the Non-GHG BAECT emissions. Non-GHG BAECT emissions are calculated by subtracting the reported emissions from units evaluated for GHG BAECT from the facility annual emissions at the time of the first audit. This shall be calculated as follows:

Non-GHG BAECT Emissions = Total direct emissions from the most recent year reported – (reported emissions from the units evaluated for GHG BAECT)

II.C.3.a.(iii)(B) The energy BMP recommendation will include:

II.C.3.a.(iii)(B)(1) Recommendations on the most effective energy efficiency measures for the energy consumption sources analyzed to be set as Energy BMPs.

II.C.3.a.(iii)(B)(2) A list of energy efficiency measures with a levelized cost less than or equal to $0;

II.C.3.a.(iii)(B)(3) Recommendations on Energy BMP options that provide greater co-benefits to the surrounding communities where the top emissions unit control technologies or strategies are comparable in terms of cost effectiveness.

II.C.3.a.(iv) A plain-language summary of the audit findings, determinations, and recommendations in the top two languages spoken by the community surrounding the EITE stationary source. This summary shall include the list of GHG BAECT options for the emission units analyzed, how they were ranked and why they are being recommended.

II.C.3.a.(v) Confidential business information must be clearly identified and be submitted in a separate, supplementary document to the audit report.

II.D. GHG BAECT and Energy BMP Determination

II.D.1. Within 60 days of receipt of the audit report, the Division will determine GHG BAECT and energy BMPs for the EITE stationary sources as follows:

II.D.1.a. The GHG BAECT determination may be based on the top-ranked control technology for the emission units in the audit report, or a suite of control technologies, at the Division's discretion, so long as:

II.D.1.a.(i) The cost of the suite of control measures, combined, would not be unduly burdensome to the facility; and

II.D.1.a.(ii) The total annual CO2 emissions reductions generated by the suite of measures is equal to or greater than the annual CO2 emissions reductions generated by the top-ranked control technology according to the audit report.

II.D.1.b. A GHG BAECT determination will be issued for each GHG emissions unit in the audit scope and include:

II.D.1.b.(i) The Division's determination of specific control technologies and/or measures for that emission unit, including the current GHG emissions rate of each audited emission unit at the time of the audit;

II.D.1.b.(ii) All control technologies found under Section II.C.3.a.(i) to have a net levelized cost less than or equal to $0, where cost neutrality can be achieved no more than 5 years from operational date of the technology, except where the auditor has established that doing so would pose an unreasonable burden to the facility; and

II.D.1.b.(iii) The GHG emission rate per unit of final product at the EITE stationary source for the individual emissions units after implementation of the prescribed measures.

II.D.1.b.(iv) The final GHG BAECT and energy BMP intensity rate determination shall be issued for the EITE stationary source as a rate of total GHG emission (CO2e) for the emissions units included in the audit scope per final product of the facility. This calculation shall be based on the determination(s) in Sections II.D.1.a. and II.D.1.c. (as applicable) and shall be calculated as follows:

GHG BAECT & Energy BMP Intensity Rate Determination = Σ (CO2e per tons of facility product for each emission unit in audit scope).

II.D.1.b.(iv)(1) The Division may adjust the final GHG BAECT and energy BMP intensity determination based on a change to the GHG emission rate for any GHG BAECT measure after the GHG reduction measure is fully operational and tuned.

II.D.1.c. The energy BMP determination will be issued for each energy consumption source in the audit scope and include:

II.D.1.c.(i) The Division's determination of energy BMPs for the specific energy consuming equipment; and

II.D.1.c.(ii) Any energy efficiency measures found under Section II.C.3.a.(ii) to have a net levelized cost less than or equal to $0 that are not included in the BAECT determination, unless the auditor has established that doing so would pose an unreasonable burden to the facility.

II.D.2. The Division will hold one or more public meetings on the results of the final GHG BAECT and energy BMP determinations.

II.D.3. Within 45 days of making its final GHG BAECT and energy BMP determinations, the division will present the determinations at a regular meeting of the Commission. The Commission may approve the determinations or return them to the Division for further analysis. The Division will return to the Commission for final approval at its next regular meeting or as soon as practical.

II.E. Emission Reduction Requirements

II.E.1. All EITE stationary sources subject to this rule must reduce facility-wide GHG emissions by 5 percent.

II.E.1.a. EITE stationary sources annual emissions limitation shall be calculated as described in this Section II.E.1.a. Multiply the EITE stationary source's prescribed final GHG BAECT and energy BMP intensity rate determination, as determined by the Division under Section II.D. by the number of units produced in the calendar year, to result in a GHG BAECT mass emission number. If an EITE stationary source produces more than one product and, as a result, has more than one final GHG BAECT determination, the GHG BAECT mass emissions is calculated by multiplying the intensity rate for each product by the amount of product produced in the previous year, to calculate the GHG BAECT mass emissions for each product, and then adding the mass emissions for each product to calculate the GHG BAECT mass emissions. Add the Non-GHG BAECT emissions calculated under Section II.C.3.a.(iii)(A)(5) to the GHG BAECT emissions number, resulting in a mass-based emissions representing the facility-wide total GHG emissions (CO2e), which serves as the baseline for the 5 percent mass-based reduction. Subtract the five (5) percent mass emissions reduction as required under Section II.E. This shall be calculated as follows:

Annual Emission Limit for Compliance Year in tons CO2e = (((GHG BAECT & Energy BMP Intensity Rate Determination) * (Compliance Year Facility Product)) + Non-GHG BAECT determination) * 0.95

II.E.1.b. Beginning no later than the third year after each audit year, EITE stationary sources must demonstrate the additional mass-based five (5) percent GHG emission reduction and continued compliance with the reduction described in this section, by comparing the total mass GHG emissions limitation to the direct reported GHG emissions for the previous year. This is demonstrated through the annual compliance certification in Section II.G.1.a.

II.E.1.c. Where an EITE stationary source's approved compliance action plan requires that the plan be completed and operational after the third year after each audit year, the EITE stationary source must meet an interim annual mass emission limit achieving the required mass-based five (5) percent GHG emission reduction.

II.E.1.c.(i) This interim annual five (5) percent mass reduction shall be calculated by multiplying the EITE stationary source's GHG BAECT and energy BMP intensity rate, as determined by the Division under Section II.D. by the number of units produced in the third calendar year, to result in a GHG BAECT mass emission number. Add the Non-GHG BAECT emissions to this number. Five (5) percent of this mass emissions total represents the mass GHG emissions reduction required in tons of CO2e. The calculation is as follows:

((((GHG BAECT & Energy BMP Intensity Rate Determination) * (Compliance Year Facility Product)) + Non-GHG BAECT determination) * 5%)

II.E.1.c.(ii) The interim annual emissions limitation is calculated by multiplying the current GHG emissions intensity rate as documented in the most recent audit by the compliance year facility product to result in a mass GHG emissions total. Add the Non-GHG BAECT emissions to this total, and then subtract the 5% reduction calculated in Section II.E.1.c.(i). The calculation is as follows:

((Current GHG Emissions Intensity Rate as documented in the audit report * Compliance Year Facility Product) + Non-GHG BAECT determination) – ((((GHG BAECT & Energy BMP Intensity Rate Determination) * (Compliance Year Facility Product)) + Non-GHG BAECT Determination) * 5%)

II.E.2. If, at any point after the 2022 audit cycle and before 2030 an EITE stationary source achieves mass based GHG emission reductions equal to or greater than 20% below the source's 2015 GHG emissions baseline, the 5% emission reduction required under Section II.E.1. is considered satisfied through the year 2030, provided the 20% mass-based reductions are sustained as demonstrated through annual compliance certifications under Section II.G.1.a. An EITE stationary source meeting this requirement must continue to conduct the annual audits and otherwise comply with the requirements of this rule.

II.F. Emission Reduction Requirement Compliance

II.F.1. The EITE stationary source must submit a compliance action plan within 120 days of the Commission's approval of the GHG BAECT, energy BMPs, and GHG BAECT and energy BMP intensity rate determination that includes the EITE stationary source's plan and timeline to comply with the annual mass emission limit, and interim mass emission limit in Section II.D.1.b.(iv) as applicable and the energy BMPs determination.

II.F.1.a. The EITE stationary source may use the following emission reduction mechanisms to comply with the annual and interim emission limits:

II.F.1.a.(i) Actual, direct emissions reductions onsite at the EITE stationary source; or

II.F.1.a.(ii) Actual direct GHG emission reductions submitted in the form of GHG credits awarded by the Division. In order to produce GHG credits, the emissions reductions must be real, additional, verifiable, permanent and enforceable. GHG credits will only be issued in the tracking system after emission reduction have been demonstrated; or

II.F.1.a.(iii) Installation and utilization at the facility of a retail distributed generation or net meter renewable energy project that reduces the GHG emissions from the EITE stationary source's electrical energy use, and for which the EITE stationary source has retired Renewable Energy Credits in Colorado generated that year, which demonstrate emissions reductions to comply with Section II.F.1. Utilization of Renewable Energy Credits for compliance cannot exceed the annual generation of the distributed generation system and it can only be used to satisfy the five (5) percent GHG emission reduction associated with Section II.E.1. and shall not be used for any other component of the annual emission limitation.

II.F.1.b. If the measure(s) determined to be GHG BAECT and/or energy BMPs for an emission unit also are anticipated to result in significant co-benefits, then the EITE stationary source must demonstrate in its compliance action plan that the co-benefits will be achieved through comparable reductions of the relevant harmful air pollutant(s) at the EITE stationary source. If an EITE stationary source demonstrates there are no material co-benefits from the implementation of the measure(s) determined to be GHG BAECT and/or energy BMPs, these requirements do not apply.

II.F.2. Beginning no later than the third year after each audit year, EITE stationary sources must demonstrate the additional mass-based five (5) percent GHG emission reduction described in this section II.E. through the annual compliance certification in Section II.G.1.a.

II.F.3. When considering compliance options with similar or the same cost-effectiveness, the EITE entity must give increased priority to GHG reduction initiatives that would produce co-benefits to the neighboring communities surrounding the EITE stationary source.

II.F.4. The Division will review the compliance action plan for approval.

II.F.5. EITE stationary sources must comply with the compliance action plan once approved by the Division.

II.F.6. If in any calendar year an EITE stationary source achieves reported emissions lower than the annual emissions limitation, the Division will award the EITE stationary source GHG credits equal to the difference between the annual emissions limitation and reported emissions. GHG credits will only be issued after emission reductions have been demonstrated.

II.F.7. If in any calendar year an EITE stationary source fails to achieve the annual emissions limitation, the owners and operators may remedy this noncompliance by surrendering in the EITE entity's compliance account sufficient GHG credits so as to reduce the actual emissions to the EITE annual emissions limitation.

II.G. Reporting

II.G.1. Owners or operators of EITE stationary sources must submit an annual report to the Division by May 1 of each year (beginning May 1, 2026) that includes:

II.G.1.a. Annual Compliance Certification Requirements. The account representative of each EITE stationary source must submit a compliance certification to the Division or its agent that certifies:

II.G.1.a.(i) The EITE stationary source's annual GHG emissions, in metric tons, for the previous calendar year;

II.G.1.a.(ii) The total production at the EITE stationary source, in units that are consistent with the GHG BAECT and energy BMP intensity rate determination, for the previous year;

II.G.1.a.(iii) The EITE stationary source's GHG emissions rate per product for the previous calendar year and the GHG BAECT and energy BMP intensity rate determination.

II.G.1.a.(iv) The EITE stationary source's annual emissions limitation for the previous year;

II.G.1.a.(v) The difference, if any, between the EITE stationary source's actual total direct GHG emissions for the previous year and the EITE stationary source's annual emissions limitation for the previous year.

II.G.1.a.(vi) For EITE stationary sources that are complying through GHG credits pursuant to Section II.F.1.a.(ii):

II.G.1.a.(vi)(A) In the event that the EITE stationary source has actual total emissions that exceed its annual emissions limitation, the compliance certification shall specify the GHG credits that are to be surrendered from the EITE stationary source's compliance account sufficient to meet the EITE stationary source's annual emissions limitation.

II.G.1.b. Current project status to implement GHG BAECT or energy BMPs contained in a compliance action plan under Section II.F.1.;

II.G.1.b.(i) The current status of measures to achieve comparable co-benefits required under Section II.F.1.b.

II.G.1.c. If the EITE stationary source is determined to be employing energy BMPs through certification to the Federal Energy Star Program or the ISO 50001 standard, the EITE stationary source must submit the information in accordance with Section II.C.3.a.(ii);

II.G.1.d. Instances of noncompliance with the Division's approved GHG BAECT and energy BMPs determination, compliance action plan, reason(s) for noncompliance, and actions taken or planned to return to compliance; and

II.G.1.e. All information necessary for the Division to confirm the EITE stationary source's emission rate in the prior year.

II.G.2. In addition to the annual report, owners and operators of EITE stationary sources must submit a final audit update to the Division within 60 days of the operation of GHG BAECT and/or energy BMPs, which includes verification that all GHG BAECT and energy BMP measures established in section II.D. are operational.

II.H. Recordkeeping

II.H.1. EITE stationary sources must maintain records for a period of ten (10) years and make records available to the Division upon request, including:

II.H.1.a. Division approved audit plan.

II.H.1.b. Final audit reports.

II.H.1.c. Commission approved GHG BAECT and energy BMP determinations.

II.H.1.d. Annual Compliance Certificate

II.H.1.e. Approved compliance action plans and records reasonably necessary to demonstrate compliance with the approved plan.

II.H.1.f. Current certification or registration documentation to applicable standards to show continued compliance with Section II.C.3.a.(ii)(B) or (C).

II.H.1.g. If the final GHG BAECT is determined to have an operation date that is beyond the next 5-year audit, the EITE stationary source must maintain records of project management documentation related to the implementation of the GHG BAECT measure including project status, timeline, expected operational date as proposed and approved in the compliance action plan.

II.I. Accounting and Tracking System and Account Establishment and Registration Requirements

II.I.1. Establishment of accounting and tracking system and accounts.

II.I.1.a. The Division or its agent will establish an accounting and tracking system for EITE GHG credits.

II.I.1.a.(i) EITE GHG credits can only be used by EITE sources.

II.I.1.b. Upon receipt of the application required under Section II.I.2, the Division or its agent will establish one compliance account for each EITE stationary source in the accounting system.

II.I.1.c. If Division determines that a regulated source adversely affects a disproportionately impacted community through emissions of locally harmful air pollutants, the Division shall assign an identifier.

II.I.2. All EITE stationary sources must complete an application to register with the Division or its agent for a compliance account in the accounting system within 30 days after the Commission approves its GHG BAECT and Energy BMP determination, or within 30 days after the EITE stationary source first reports annual GHG emissions exceeding the 50,000-metric-ton threshold, whichever occurs later. Applicants must provide such information as the Division deems necessary in connection with the application, including but not limited to the following information:

II.I.2.a. Name, physical and mailing addresses, contact information, date and place of incorporation, and any ID number assigned by the incorporating agency;

II.I.2.b. Names and addresses of the entity's directors and officers with authority to make legally binding decisions on behalf of the entity, and partners with over 10 percent control over the partnership, including any individual or entity doing business as the limited partner or the general partner;

II.I.2.c. Names and contact information for person controlling over 10 percent of the voting rights attached to all the outstanding voting securities of the entity;

II.I.2.d. A business number, if one has been assigned to the entity by a Colorado state agency; and

II.I.2.e. A government-issued taxpayer or Employer Identification Number or for entities located in the United States, a U.S. Federal Tax Employer Identification Number, if assigned.

II.I.3. An EITE stationary source must designate a primary account representative and at least one, and up to four, alternate account representative. Any individual who requires access to the accounting system must register as a user in the accounting system.

II.I.4. Each authorized representative shall represent, and by his or her representations, actions, inactions, or submissions, legally bind the EITE stationary source in all matters relating to this part. Any representation, action, inaction, or submission by any authorized account representative shall be deemed to be a representation, action, inaction, or submission by the source.

II.J. Division Action on Compliance Certifications and Submittals

II.J.1. The Division may review and conduct independent audits of any compliance certification or other submission to the Division under this regulation.

II.J.2. If any submission contains false or fraudulent information, that is considered a violation of this regulation, subject to enforcement under § 25-7-115, C.R.S.

II.K. Noncompliance

II.K.1. In the event that an EITE stationary source fails to meet its annual emissions limitation, the EITE stationary source shall be deemed in noncompliance and must surrender three GHG credits for every ton emitted by the EITE stationary source in excess of the annual emissions limitation or be subject to a civil penalty or other enforcement action by the Division.

II.K.2. Nothing in Section II.K.1 shall limit the enforcement powers of the Division to remedy noncompliance with this Part, including but not limited to the Division's ability to seek additional penalties or fines, and compel actual reductions at any EITE stationary source in noncompliance.

PART C GENERAL PROVISIONS

I. Severability

If any section, clause, phrase, or standard contained in these regulations is for any reason held to be inoperative, unconstitutional, void, or invalid, the validity of the remaining portions thereof will not be affected and the Commission declares that it severally passed and adopted these provisions separately and apart.

PART D STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

I. Adopted: May 22, 2020

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and 25-7-110.5., C.R.S., and the Air Quality Control Commission's ("Commission") Procedural Rules, 5 Code Colo. Reg. §1001-1.

Basis

During the 2019 legislative session, Colorado's General Assembly adopted House Bill 2019-1261 (concerning the reduction of greenhouse gas pollution) (HB 19-1261) amending the legislative declaration in §25-7-102 of the Act, and Senate Bill 2019-096 (concerning the collection of greenhouse gas emissions data) (SB 19-096) creating §25-7-140 of the Act. HB 19-1261 and SB 19-096 both define greenhouse gas pollution (GHG) as including carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF_6) and nitrogen trifluoride (NF_3). In HB 19-1261, now codified in part at §§25-7-102(2) and -105(1)(e), C.R.S., the General Assembly declared that "climate change adversely affects Colorado's economy, air quality and public health, ecosystems, natural resources, and quality of life[,]" acknowledged that "Colorado is already experiencing harmful climate impacts[,]" and that "many of these impacts disproportionately affect" certain disadvantaged communities. § 25-7-102(2), C.R.S. Consequently, the General Assembly updated Colorado's statewide greenhouse gas pollution (GHG) reduction goals requiring the Commission to implement regulations to achieve a 26% reduction of statewide GHG by 2025; 50% reduction by 2030; and 90% reduction by 2050 as compared to 2005 levels. § 25-7-102(2) (g), C.R.S.

To accomplish these important goals, the legislature also passed SB 19-096, now codified as §25-7-140, C.R.S., directing the Air Quality Control Commission (Commission) to undertake two phases of rulemaking aimed first at requiring GHG emitters to monitor and report GHG emissions, § 25-7-140(2)(a)(I), C.R.S., and second to implement measures allowing the state to cost-effectively meet its GHG reduction goals. § 25-7-140(2)(a)(III), C.R.S.

With respect to GHG reporting and the statewide inventory, §25-7-140(2)(a)(I), C.R.S., requires the Commission to adopt rules by June 1, 2020, "requiring greenhouse gas-emitting entities to monitor and publicly report their emissions as the Commission deems appropriate to support Colorado's [GHG] inventory efforts and to facilitate implementation of rules that will timely achieve Colorado's greenhouse gas emission reduction goals." Further, §25-7-140(2)(a), C.R.S., requires the Commission to consider what information is already being reported for Colorado under the United States Environmental Protection Agency's (EPA) current federal GHG reporting rule, otherwise known as the Mandatory Greenhouse Gas Reporting Rule codified in Title 40 CFR Part 98 (Part 98), and tailor new reporting requirements to fill any gaps in data as determined to be appropriate to allow for a comprehensive and robust state GHG inventory.

§ 25-7-140(2)(a)(I), C.R.S., also requires these rules to "include requirements for providers of retail or wholesale electric service in the state of Colorado to track and report emissions from all generation sources within the state and elsewhere that electricity consumption by their customers in this state causes to be emitted." § 25-7-105, C.R.S, setting forth the duties of the Commission, also directs development of rules for evaluating how public utilities are meeting obligations under Clean Energy Plans with the Public Utility Commission through considerations of facility ownership and purchased power. § 25-7-1051(e)(VIII)(E), C.R.S.

§§ 25-7-105(1)(e) and 140(2)(a)(III), C.R.S., further requires the Commission to implement GHG reduction strategies to achieve the reduction goals set forth in §25-7-102(2)(g), C.R.S. HFCs are highly potent GHGs generally used in aerosols, refrigeration and air conditioning, and foam blowing. Phasing out HFCs from most manufacturing processes and end-uses is adopted as a strategy towards accomplishing the mandated GHG reductions.

Regulation Number 22, Parts A and B, Section I. are intended to satisfy the requirements set forth by the General Assembly in §25-7-140(2)(a)(I), C.R.S., with respect to statewide GHG reporting and an initial GHG reduction strategy towards addressing statewide reductions required by §25-7-140(2)(a)(III), C.R.S., and § 25-7-105(1)(e), C.R.S., by implementing the phase-out of HFCs in manufacturing and end-use products in Colorado.

Specific Statutory Authority

The Act, specifically §25-7-105(1), C.R.S., directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102, C.R.S., and that are necessary for the proper implementation and administration of the Act.

§ 25-7-102(2), C.R.S., declares that "climate change adversely affects Colorado's economy, air quality and public health, ecosystems, natural resources, and quality of life" that reducing GHG is necessary "to limit the increase in the global average temperature" and that "reducing [GHG], Colorado will also reduce other harmful air pollutants, which will, in turn, improve public health, reduce health care costs, improve air quality, and help sustain the environment[.]" Further, §25-7-102(2), C.R.S., declares that reducing GHG will result in economic benefits to Colorado by creating new markets, spurring innovation, and driving investment in low-carbon technologies thus positioning Colorado's "economy, technology centers, financial institutions, and businesses to benefit from national and international efforts to reduce [GHG.]" § 25-7-102(2)(f), C.R.S.

§ 25-7-106, C.R.S., provides the Commission maximum flexibility in developing an effective air quality program and promulgating such a combination of regulations as may be necessary or desirable to carry out that program. §25-7-106(6), C.R.S., further authorizes the Commission to require owners and operators of any air pollution source to monitor, record, and report emission data and other information as the Commission may require.

§ 25-7-140(2)(a)(I), C.R.S., specifically directs the Commission to, by June 1, 2020, "adopt rules requiring [GHG]-emitting entities to monitor and publicly report their emissions as the commission deems appropriate to support Colorado's greenhouse gas emission inventory efforts and to facilitate implementation of rules that will timely achieve Colorado's greenhouse gas emission reduction goals. The commission shall consider what information is already being publicly reported by the federal environmental protection agency and tailor new reporting requirements to fill any gaps in data, as it determines is appropriate, to allow for maintaining and updating state inventories that are sufficiently comprehensive and robust. The rules must include requirements for providers of retail or wholesale electric service in the state of Colorado to track and report emissions from all generation sources within the state and elsewhere that electricity consumption by their customers in this state causes to be emitted. The commission may require emitting entities to report the amount of emissions of each of the seven individual components of greenhouse gases as well as the carbon dioxide equivalent of those emissions."

§ 25-7-140(2)(a)(III), C.R.S., requires the Commission to implement measures to cost-effectively allow the state to meet its GHG emission reduction goals, which includes reduction of HFCs as potent GHGs. §25-7-105(e), C.R.S., authorizes the Commission to promulgate implementing rules and regulations to achieve statewide GHG emission reduction goals, including emission reduction strategies that have been deployed by another jurisdiction to reduce multi-sector GHG emissions. §25-7-109(2), C.R.S., authorizes the Commission to adopt emission control regulations to reduce emissions of various pollutants, including chemical substances such as HFCs.

Purpose

The following section sets forth the Commission's purpose in adopting Regulation Number 22, and includes the technological and scientific rationale for the adoption of Regulation Number 22:

Part A: Greenhouse Gas Reporting

Part A has been developed to allow the reporters and the Division to leverage existing EPA reporting tools that are currently used by the majority of sources covered by this regulation, as well as for consistency with other U.S. Climate Alliance states that have implemented GHG reporting regulations. The Division intends to develop a mechanism to receive XML files that are exported from EPA's electronic GHG reporting tool, known as e-GGRT. The EPA tool can be used by entities with emissions below the federal reporting thresholds to compile, summarize, and export GHG emissions data in the XML file. The information contained in the XML files will then be uploaded into a database for use in future inventories and planning activities. Use of existing EPA reporting tools will allow for the GHG data reporting program in Colorado to begin as expeditiously as possible and minimize the burden on the regulated sources.

Additionally, consistency with EPA and other state data collection programs will be necessary if Colorado joins a regional program at some point in the future and will allow for a smooth transition if additional federal legislation or regulation is adopted for GHGs. To ensure consistency and allow for comparison with other states, GHG data reporting by the affected sources under Part A, will be performed using the Intergovernmental Panel on Climate Change (IPCC) 4th Assessment Report, 100-year time horizon GWP values. Part A covers the collection of the GHG data pursuant to §25-7-140(2)(a)(I), C.R.S., and does not address how that data will be used in the Colorado GHG Inventory or other planning activities.

Because the data will be collected for each individual GHG pollutant, the Division will be capable of converting and comparing reported data to CO2e using other IPCC Assessment Reports' GWP values and/or time horizons. In the statewide GHG inventory, the Division will publish data by the mass and GWP value of each GHG pollutant pursuant to the IPCC's 4th and 5th Assessment Reports as well as, at the direction of the Commission, future IPSS Assessment Reports. The use of the 100-year time frame IPCC 4th Assessment report in these regulations is not intended to convey that those values should be used for planning purposes or are otherwise more appropriate than more recent analysis.

Consistent with the Federal Mandatory Reporting Rule (Part 98), emissions of each GHG constituent, as required and defined in §25-7-140, C.R.S., will be reported in metric tons of CO2e. Where existing emissions reporting under Colorado regulations is used to meet the obligations of this regulation, emissions will be reported by the source in the unit of measure required by the referenced regulation. In addition, each GHG constituent will be reported individually, enabling the Division to convert reported data using more updated GWP values and/or time horizons, as appropriate, for developing the Colorado GHG inventory or other planning activities. The Division will convert the emissions to metric tons for use in the GHG inventory or other planning activities. While Part A utilizes the reporting tools and protocols of Part 98, the Division is requiring reporting from certain source categories in Colorado regardless of the related federal reporting threshold in order to obtain a more complete and granular data set to inform the inventory and planning processes. More detailed data will also inform local governments as they pursue their own climate change goals. Source categories required to report all GHG emissions, regardless of reporting thresholds under Part 98, include all electricity generation and distribution (whether subject to PUC jurisdiction under § 40-1-103, C.R.S., or not), local distribution companies, industrial waste landfills, active underground coal mines, and industrial wastewater facilities.

GHG emissions reporting for oil and natural gas operations and equipment at or upstream of a natural gas processing plant and natural gas transmission and storage covered under Section III.C. will be gathered in accordance with Commission Regulation Number 7. These reporting requirements and protocols fill gaps in the federal reporting requirements by expanding the facilities required to report as well as the data reported under Regulation Number 7, Part D, Sections IV. and V. As such, the Commission recognizes that information reported under Regulation Number 7 may differ from that reported under Part 98 as the inventory required under Regulation Number 7 is more comprehensive, detailed and takes into account information relevant to Colorado operators.

Under Part A, suppliers engaged in activities covered by Subparts LL, MM, NN, OO, PP, and QQ of Part 98 are required to report GHGs based upon the quantity that would be associated with combustion or use of the products supplied. This differs from other reporting under Part 98 since the reported data does not always reflect a direct emission. Suppliers covered by Subparts LL (coal-to-liquid suppliers), MM (petroleum product suppliers), and NN (natural gas and natural gas liquids) report the GHGs that would result from total combustion or release of the product being supplied. The information obtained through these reports is important to developing a comprehensive statewide GHG inventory, however the nature of the data requires special attention to account for the type of supply and locus of GHG emissions, if any. For instance, under Subpart PP, carbon dioxide suppliers report carbon dioxide that is produced by mass, and not as emissions. The Commission acknowledges that carbon dioxide supply may not always equate directly to GHG emissions because it is not combusted by an end user and may not be released into the atmosphere depending on its end use. Likewise, Subpart NN suppliers are required to assume that all fractionated products are combusted as fuel despite the fact that a substantial quantity of those products are not combusted but used as chemical feedstocks. In fact, EPA's technical support document for Subpart NN indicates that fuel uses make up just under 30% of total natural gas liquids (NGL) product sales. As a result, the reporting under Subpart NN does not necessarily equate entirely to GHG emissions as provided in a Part 98 report. Thus, the Division will be required to analyze if and how GHGs reported from these source categories are properly included in the statewide GHG inventory and reduction efforts.

EPA made advance determinations that certain elements of Part 98 reports are subject to federal Confidential Business Information (CBI) protections and has published those determinations at https://www.epa.gov/ghgreporting/confidential-business-information-ghg-reporting (updated April 8, 2020). As part of submissions pursuant to Part A, Section IV.B., a statement that the entity is following EPA's guidelines for Part 98 with respect to designation of information as CBI in the certification statement under Section IV.B.6. shall satisfy the company's obligation to identify information in the report as CBI. The Commission does not, however, intend that such statements be determinative of whether the information is CBI under Colorado law, but expects that information will be made available as required and permitted by the Colorado Open Records Act.

A significant gap in GHG reporting that is imperfectly captured by Part 98 relates to fuel supplied, consumed, and combusted in the state. While reporting from local distribution companies and suppliers required to report under Part A provide important pieces of the fuel supply chain, end-uses including where the fuel is actually combusted, such as in-state or out-of-state, are more difficult to accurately account for. Thus, the Division will utilize other sources of information to fill gaps necessary to fully inform the statewide GHG inventory related to the end use and combustion location of fuels. To accomplish this, the Division may use sources including, but not limited to, the Energy Information Administration's "prime supplier" reporting through its EIA-782C form and information obtained from the Colorado Department of Revenue regarding fuel distributors. Having considered all relevant factors, including but not limited to, current federal GHG reporting under Part 98, statutory requirements under §§24-4-103(2.7) and 29-1-304.5, C.R.S., and feedback from stakeholders, the Commission has decided to provide for optional GHG reporting from domestic wastewater plants and active municipal solid waste landfills not otherwise required to report under Part 98.

Any facilities or operations for which GHG reporting is optional should report in accordance with the protocols and deadlines set forth in Part A, Sections III and IV. In doing so, these facilities and operations will enable the Commission to establish a more robust statewide GHG inventory and better inform future reduction strategies. The Commission recognizes the lack of universally accepted GHG calculation or reporting protocols for some voluntary reporting source categories, such as domestic wastewater treatment plants and agricultural operations. The Division will continue to consult with potential voluntary reporters in these categories to reach consensus on appropriate and acceptable protocols for reporting purposes. For domestic wastewater treatment plants at Part A, Section III.B.8., examples of such protocols may include the "U.S. Community Protocol for Accounting and Reporting of Greenhouse Gas Emissions" (Version 1.2, July 2019), at Appendix F: Wastewater and Water Emission Activities and Sources, published by ICLEI: Local Governments for Sustainability, and protocols developed by the IPCC or based on IPCC protocols. The Division expects that all direct GHG emissions from a domestic wastewater treatments plant will be calculated and reported by a voluntary reporter. For an agricultural operation identified in Part A, Section III.A.9., examples of such protocols may include those specified in Subpart JJ of 40 CFR, Part 98 and developed by the IPCC and the U.S. Department of Agriculture (USDA) for the sector.

Part A will also quantify the GHG emissions associated with electricity imported and consumed in Colorado, as required by §25-7-140(2)(a)(I), C.R.S., and which is not covered by the federal mandatory reporting under Part 98 data submissions. Attribution of GHG emissions to statewide electricity consumption will be accomplished by requiring subject entities to submit supplemental data including generation, wholesale and retail sales, and emissions information to the Division, as appropriate for the business activities conducted in Colorado by the entity. The supplemental data form will be developed through a stakeholder process led by the Division. The supplemental data form is intended to report annual consolidated data from detailed sources already collected by or available to the entities for business or other regulatory purposes (i.e. contracts, internal tracking systems for energy transactions with counterparties or through organized markets, Energy Information Administration reporting, Public Utility Commission reporting, US EPA, Federal Energy Regulatory Commission, etc.) into a single process and standard report format so that the Division can document emissions associated with total electricity consumption in Colorado.

The reporting form will include calculation methodologies and data sources, prioritizing more specific sources over less specific sources for determining GHG emissions from imported electricity when the generation source of the energy is unknown, which can occur through various market transaction mechanisms. Quantification of GHG emissions associated with electricity exported from Colorado will also be accomplished through the use of the supplemental data form because understanding the complete energy flow through the transmission and distribution systems is necessary to determine energy consumed in Colorado. Direct reporting of this annual summary information using a consistent form, rather than relying on summaries provided through the Department of Energy or other sources, will provide necessary completeness and granularity of the data for state and local GHG strategy development. Additionally, direct reporting to the Division will also allow for more timely incorporation into the Colorado GHG Inventory process and more detailed analysis and trending to assess the progress toward achieving the statewide GHG reduction goals. In adopting the reporting requirements of this Regulation No. 22, Part A, IV.C.2 the Commission does not take a position on what information should be utilized to determine GHG emission reductions as part of a Clean Energy Plan. The requirements for submitting data associated with Clean Energy Plans, and the process by which the Division will evaluate the emissions reduction projections and provide recommendations to the Public Utilities Commission, will be developed and published through a separate process from this Regulation Number 22 rulemaking. Subpart A will also establish ongoing reporting for utilities that have received approval of a Clean Energy Plan by the Public Utilities Commission. Tracking of GHG reduction progress achieved by these plans will inform development, assessment, and refinement of strategies to achieve the statewide GHG targets.

Sources of Sulfur Hexafluoride (SF6) owning or operating electrical transmission and distribution equipment facilities located in more than one state that calculate SF6 emissions on a system-wide basis for recordkeeping and reporting under EPA's Part 98 may determine its Colorado SF6 emissions by estimating the Colorado portion of its system-wide emissions based on the percentage of its total transmission line miles that exist in Colorado.

Given recent and ongoing deregulation efforts by the federal government, and especially those focused on air quality and climate change, the Commission finds it necessary to protect Colorado's regulatory regime in these areas from potential federal deregulation or rollbacks. This must be balanced with the legislative directive in § 25-7-140(2)(a)(I), C.R.S., to "consider what information is already being publicly reported by the [EPA,]" which the Commission is doing by leveraging Part 98 reporting and tools available thereunder, including e-GGRT. In doing so, the Commission is cognizant that these programs and tools are subject to change in ways that may either improve or diminish their utility for Colorado's GHG emission reporting and inventory efforts. By incorporating by reference Part 98 and its related subparts as they are effective July 1, 2019, and by referencing applicable provisions of Part 98 in Part A, Sections III.A. and B of this Regulation Number 22, the Commission intends to protect against potential federal rollbacks by specifying those currently subject to federal GHG reporting will continue to report under the federal requirements as they currently stand in the event the federal GHG reporting rules are revised or rescinded. Should the EPA indicate, through public notice or otherwise, an intent in any way diminish or rollback the requirements of Part 98, its related subparts, or associated tools, including but not limited to e-GGRT, the Commission and Division will endeavor to promptly establish reporting requirements and tools necessary to maintain the GHG reporting and inventory regime adopted in this Regulation Number 22, Part A. However, the Commission also recognizes that some future changes might enhance GHG reporting, so the Commission may also choose to update the incorporation date if those future revisions align with and advance Colorado's goals

Part B, Section I.: Prohibitions on Use of Certain Hydrofluorocarbons in Aerosol Propellants, Chillers, Foam, and Stationary Refrigeration End-Uses

The federal EPA adopted two rules under its Significant New Alternatives Policy (SNAP), Rule 20 in July 2015, and Rule 21 in December 2016, which require phasing out the use of high-GWP HFCs in retail and residential refrigeration and air conditioning (AC), aerosol products, and rigid and spray foam end-uses. Under SNAP Rule 20, the compliance dates for eliminating unacceptable HFCs ranged from July 2016 to January 2022, depending on the application. The compliance dates under SNAP Rule 21 ranged from January 2017 to January 2025. In August 2017, the D.C. Circuit of the United States Court of Appeals vacated SNAP Rule 20 to the extent it requires manufacturers to replace HFCs with a substitute substance finding the EPA had exceeded its authority under Section 612 of the Clean Air Act (42 U.S.C. § 7671k). However, the D.C. Circuit found that EPA's removal of HFCs from the list of safe substitutes under SNAP was lawful thus enabling the EPA to prohibit or limit prospective use of HFCs in manufacturing and end uses. Yet, in 2018, EPA guidance advised that it would not be enforcing SNAP Rule 20 until it developed new rules based on the D.C. Circuit's ruling, which has not occured. In April 2019, the D.C Circuit vacated SNAP Rule 21 to the same extent and on the same grounds as SNAP 20.

Absent federal enforcement regulating use of these highly potent GHGs, individual states have adopted, or are in the process of adopting, statutes and regulations phasing out the use of HFCs in manufacturing and end-use products. The U.S. Climate Alliance has drafted a model framework to promote uniformity of HFC regulation across member states. Part B., Section I. is based upon the U.S. Climate Alliance's model framework as are proposed HFC rules under consideration in other states. Based on stakeholder feedback and significant economic impacts, the Commission adopted an alternative requirement for positive displacement chillers that differs from the U.S. Climate Alliance's model framework. The purpose of this provision is to address GHG emissions associated with use of prohibited high-GWP HFCs in the manufacture of positive displacement chillers in lieu of phasing out the use of these HFCs in chillers destined for sale or installation outside of Colorado or other states with similar HFC prohibitions.

This alternative approach requires GHGs associated with the use of prohibited high-GWP HFCs in this specific manufacturing process to be mitigated through best management practices at the manufacturing facility and any remaining emissions to be addressed through GHG reduction projects completed in the State of Colorado. Positive displacement chillers manufactured for sale or installation in Colorado after the January 1, 2024 prohibition date will still be restricted from using prohibited HFCs. The Division, in considering emission reduction projects under Section I.C.3.a.(v), will give preference to projects that have environmental co-benefits or benefits to the local community. While projects can include those developed or owned by the manufacturer, such projects must be additional to any efforts planned or undertaken as part of an overall GHG emissions reduction program the manufacturer may have and must not be projects or activities that would be carried out in the ordinary course of business. Additionally, based on public comment and stakeholder feedback, Part B., Section I. differs from the U.S. Climate Alliance's model framework in the treatment of bear spray and law enforcement pepper spray. These two products in the aerosol-propellant category have been exempted in Part B., Section I.

Additional Considerations

The following are additional findings of the Commission made in accordance with the Act:

§ *25-7-110.5(5)(b), C.R.S.*

As these revisions exceed and may differ from the federal rules under the federal act, in accordance with § 25-7-110.5(5)(b), C.R.S., the Commission determines:

(I) Any federal requirements that are applicable to this situation with a commentary on those requirements;

Part A: In order to improve the nationwide inventory of GHG emissions, Part 98 sets forth the federal GHG reporting requirements for qualifying source categories in accordance with the Federal Clean Air Act. The Subparts to Part 98 establish the reporting protocols and methodologies for each source category. Part 98 effectively establishes three groups of source categories required to report annual GHG emissions: sources required to report regardless of emission volumes; sources only required to report if emissions meet or exceed specified thresholds (generally 25,000 metric tons of CO2e in combined emissions from stationary sources); and fuel suppliers that import or export product equivalent to 25,000 metric tons of CO2e or more. Through Part A, the Commission builds upon established federal reporting requirements and closes reporting gaps by eliminating reporting thresholds for certain sources and expanding certain other source categories to report GHG emissions in order to establish a more robust and accurate GHG inventory for Colorado.

Part B., Section I.: To the extent Part B., Section I. requires manufacturers to replace HFCs, there are no applicable federal requirements as a result of the D.C. Circuit Court's vacature of SNAP Rules 20 and 21 and EPA's lack of progress in further regulating HFCs. To the extent that Part B., Section I. prohibits or restricts prospective uses of prohibited HFCs (phases out), it does not conflict with any applicable current federal regulations.

(II) Whether the applicable federal requirements are performance-based or technology-based and whether there is any flexibility in those requirements, and if not, why not;

Part A: There are no control requirements associated with the Part A GHG reporting rule.

Part B., Section I.: To the extent SNAP Rules 20 and 21 remain in effect and are enforceable, the federal HFC rules are primarily technology-based in that the rules largely proscribe or severely limit the use of HFCs in certain manufacturing processes and end-uses thus requiring substitution or replacement with lower GWP substances.

(III) Whether the applicable federal requirements specifically address the issues that are of concern to Colorado and whether data or information that would reasonably reflect Colorado's concern and situation was considered in the federal process that established the federal requirements;

Part A: Colorado's General Assembly has determined that climate change adversely affects Colorado's economy, air quality and public health, ecosystems, natural resources, and quality of life and that reducing statewide GHG emissions can mitigate these impacts. § 25-7-102, C.R.S. While the EPA also indicated that its "mandatory GHG reporting program [set forth in Part 98] will provide EPA, other government agencies, and outside stakeholders with economy-wide data on facility-level (and in some cases corporate-level) GHG emissions," § 25-7-140, C.R.S. explicitly requires the Commission to adopt GHG reporting requirements to fill any gaps in the federal reporting requirements. To the extent that reporting under 40 CFR Part 98 establishes adequate GHG reporting to satisfy this legislative directive, those requirements and reporting protocols have been adopted. To the extent that the Commission has determined certain source categories may be underreporting due to reporting thresholds or exemptions of certain source categories, those thresholds or exemptions have been eliminated. Additionally, Part A establishes new reporting requirements for certain source categories for which there are no federal reporting requirements.

Part B., Section I.: To the extent Part B., Section I. requires manufacturers to replace HFCs, there are no current applicable federal requirements as contemplated in this regulation. As a result of the D.C. Circuit Court's vacature of SNAP Rules 20 and 21 and EPA's lack of progress in further regulating HFCs, there are no current applicable federal requirements relating to the phase-out of HFCs as contemplated in this regulation. To the extent that Part B., Section I. prohibits or restricts prospective uses of prohibited HFCs (phases out), it does not conflict with any current applicable federal regulations.

(IV) Whether the proposed requirement will improve the ability of the regulated community to comply in a more cost-effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later;

Part A: Part A will maintain reporting requirements for facilities already required to report under Part 98 and will require additional facilities to report under reporting protocols either set forth in Part 98 and related subparts or under state reporting requirements already in place (i.e. oil and natural gas operations reporting under Regulation Number 7). By leveraging existing protocols and reporting procedures, Part A minimizes inefficiencies while still accomplishing the legislative mandate set forth in § 25-7-140, C.R.S.

Part B., Section I: To the extent Part B., Section I. requires manufacturers to replace HFCs, there are no applicable federal requirements as contemplated in this regulation. As a result of the D.C. Circuit Court's partial vacature of SNAP Rules 20 and 21 and EPA's lack of progress in further regulating HFCs, there are no current applicable federal requirements relating to the phase-out of HFCs as contemplated in this regulation However, Part B., Section I imposes restrictions on the same substances as those restricted under SNAP Rules 20 and 21 with which the regulated community had already started to comply before those rules were vacated. Absent federal progress in regulating use of these highly potent GHGs, individual states have adopted, or are in the process of adopting, statutes and regulations phasing out the use of HFCs in manufacturing and end-use products. The U.S. Climate Alliance has drafted a model framework to promote uniformity of HFC regulation. Part B., Section I. is based upon the U.S. Climate Alliance's model framework as are proposed HFC rules under consideration in other states. This consistency is intended to improve the regulated community's ability to comply in a more cost-effective manner.

(V) Whether there is a timing issue which might justify changing the time frame for implementation of federal requirements;

Part A: The March 31 annual reporting deadline is the same under Regulation Number 22 and Part 98 for all reporters. Regulation Number 22 does not affect federal GHG reporting requirements for those sources subject to federal reporting requirements. With respect to any sources required to report under Regulation Number 22 but not under federal requirements, there is no timing issue related to implementation of any federal requirements.

Part B., Section I.: To the extent Regulation Number 22, Part B., Section I., requires manufacturers to replace HFCs, there are no applicable federal requirements as a result of the D.C. Circuit Court's vacature of SNAP Rules 20 and 21 and EPA's lack of progress in further regulating HFCs. To the extent that Regulation Number 22, Part B., Section I., prohibits or restricts prospective uses of prohibited HFCs (phases out), there are no timing issues that justify changing the time frame for implementation of any federal requirements.

(VI) Whether the proposed requirement will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth;

Part A: Part A's annual GHG reporting requirements are retrospective in that they are a report of past emissions and therefore are not subject to uncertainty and do not hinder or negatively affect future growth of facilities required to report past emissions.

Part B., Section I.: The HFC phase-out in Part B., Section I. allows a reasonable time to comply and permits the substitution of lower-GWP substances or retrofit of components. As such, affected businesses or industrial sectors are afforded a reasonable margin for accommodation of uncertainty and future growth.

(VII) Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources;

Part A: With respect to any sources already required to report GHG emissions under the federal reporting requirements, Part A, maintains reasonable equity as reporting requirements are the same for each source type. With respect to any sources newly required to report GHG emissions under Part A, the rule establishes reasonable equity as reporting requirements are the same for each source type.

Part B., Section I.: Part B., Section I., phases-out the use of HFCs across specific end-uses and manufacturing processes, with only limited exemptions or alternative compliance requirements. Reasonable equity is established among these end-uses and processes by use of phase-out dates that are the same as those determined to be achievable with industry input in the development of the SNAP rules and the U.S. Climate Alliance's model framework. Part B., Section I. was also based upon the U.S. Climate Alliance's model framework to allow those subject to the rule to avoid varying requirements across states to the extent possible while still addressing the serious climate change impacts these substances present.

(VIII) Whether others would face increased costs if a more stringent rule is not enacted;

Part A: No, it is not anticipated there would be increased direct costs to others if a more stringent rule is not enacted.

Part B., Section I.: The legislature has acknowledged that climate change impacts Colorado's economy and directed that GHG emissions should be reduced across the many sectors of our economy. Colorado has established specific GHG reduction goals. A more stringent HFC rule could achieve additional GHG reductions. Reductions not achieved in one sector will require measures in other sectors of the economy to achieve the state's GHG reduction goals. The HFC rule is drafted to strike a balance between the costs to the entities impacted under the rule and further measures that will need to be utilized in other sectors of the economy.

(IX) Whether the proposed requirement includes procedural, reporting, or monitoring requirements that are different from applicable federal requirements and, if so, why and what the "compelling reason" is for different procedural, reporting, or monitoring requirements;

Part A: Reporting requirements beyond those required under federal Part 98 are necessary to effectively quantify and measure Colorado's progress toward statewide GHG reductions and to achieve the public health, safety and welfare goals set forth in § 25-7-102, C.R.S., § 25-7-140(2)(a)(I), C.R.S., dictates that the Commission tailor new [GHG] reporting requirements to fill any gaps in the existing federal reporting requirements and "allow for maintaining and updating state inventories that are sufficiently comprehensive and robust."

> Through Part A, the Division proposes building upon established federal reporting requirements and closes reporting gaps by lowering or eliminating reporting thresholds for certain sources, expanding certain other source categories, and requiring new source categories to report GHG emissions in order to establish a more robust and accurate GHG inventory for Colorado. Filling gaps in emission data from those select sources not otherwise required to report under Part 98 in order to more accurately determine statewide GHG emissions and develop reduction strategies is a compelling reason to expand the reporting requirements. Additionally, under Part A, Section IV.C., electric service providers and electric utilities will be required to submit supplemental data necessary to verify GHG emissions attributable to imported and exported electricity and to verify plans submitted to the Public Utilities Commission. Under this requirement, owners and operators of these sources will be required to compile and report directly to the Division information collected by or available to them for business or other regulatory purposes. While this may overlap with some other federal reporting requirements, it is expected there will be reporting beyond what is required federally.

Part B., Section I: To the extent Part B., Section I., requires manufacturers to replace HFCs, there are no current applicable federal requirements as a result of the D.C. Circuit Court's vacature of SNAP Rules 20 and 21 and EPA's lack of progress in further regulating HFCs.

(X) Whether demonstrated technology is available to comply with the proposed requirement;

Part A: Part A maintains reporting requirements for facilities already required to report under Part 98 and will require additional facilities to report under reporting protocols either set forth in Part 98 and related subparts or under state reporting requirements already in place (i.e. oil and gas operations). Demonstrated technology exists to enable compliance with the reporting requirements of Regulation Number 22.

Part B., Section I.: Yes, non-HFC replacements with significantly lower GWP are generally available and widely used in manufacturing processes and end-uses phased out in Part B., Section I.

(XI) Whether the proposed requirement will contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain;

Part A: Under Part A, the Commission will develop a sufficiently comprehensive and robust GHG inventory to enable and inform future implementation strategies to cost-effectively reduce statewide GHG emissions to meet the legislative directive of § 25-7-102(2)(g), C.R.S.

Part B., Section I: The General Assembly has acknowledged that climate change impacts Colorado's economy and directed that GHG emissions should be reduced across the many sectors of our economy. Colorado has established specific GHG reduction goals. HFCs are a highly potent GHG such that small volumes of reduction can affect significant reductions of GHG emissions measured in CO2e. A more stringent HFC rule could achieve additional GHG reductions. Reductions not achieved in one sector will require compensating measures in other sectors of the economy to achieve the state's GHG reduction goals. Part B., Section I. is drafted to strike a balance between the costs to the entities impacted under the rule and further measures that will need to be utilized in other sectors of the economy.

(XII) Whether an alternative rule, including a no-action alternative, would address the required standard.

Part A: § 25-7-140, C.R.S., does not permit a no-action alternative and requires the Commission to adopt GHG reporting regulations "to allow for maintaining and updating state inventories that are sufficiently comprehensive and robust." Further, the statute requires the rules "include requirements for providers of retail and wholesale electric service in the state of Colorado to track and report emissions from all generation sources within the state and elsewhere that electricity consumption by their customers in this state causes to be emitted." While alternative requirements could address these mandates, the Commission has determined that the proposed reporting requirements are appropriate to establish statewide progress towards the GHG emission reduction goals mandated by the General Assembly in Section 25-7-102, C.R.S. To the extent alternative reporting thresholds and source categories were considered, they were determined to be inadequate to satisfy the directives set forth in § 25-7-140, C.R.S.

Part B., Section I.: §§ 25-7-105(1)(e) and -140(2)(a)(III), C.R.S., require the Commission to implement GHG emission reduction strategies in order to accomplish the statewide GHG emission reduction goals set forth in § 25-7-102(g), C.R.S. HFCs are a highly potent GHG such that small volumes of reduction can affect significant reductions of GHG emissions measured in CO2e. A more stringent HFC rule could achieve additional GHG reductions. Reductions not achieved in one sector will require compensating measures in other sectors of the economy to achieve the state's GHG reduction goals.

Part B, Section I. rule is drafted to strike a balance between the costs to the entities impacted under the rule and further measures that will need to be utilized in other sectors of the economy. While the General Assembly has not explicitly required implementation of an HFC phase-out as a reduction strategy and therefore a no-action alternative is possible, given the statewide reduction goals and the potency of HFCs, no action on HFCs would require more stringent measures in other sectors in order to achieve the same GHG reductions.

§ *25-7-110.8, C.R.S.*

To the extent that the § 25-7-110.8, C.R.S., requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(a) These rules are based on reasonably available, validated, reviewed, and sound scientific methodologies and all validated, reviewed, and sound scientific methodologies and information made available by interested parties has been considered.

(b) Evidence in the record supports the finding that the rule shall result in a demonstrable reduction in emission of HFCs and will enable the Commission to establish sufficiently comprehensive and robust inventories of GHGs as required by § 25-7-140, C.R.S.

(c) Evidence in the record supports the finding that the rule shall bring about reductions in risks to human health and the environment that will justify the costs to government, the regulated community, and to the public to implement and comply with the rule.

(d) The rules are the most cost-effective to achieve the necessary and desired results and reduction in air pollution.

(e) The rule will maximize the air quality benefits of regulation in the most cost-effective manner.

§ *25-7-105(1)(e), C.R.S. - Statewide GHG Pollution Abatement*

To the extent that the § 25-7-105(1)(e), C.R.S., requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

Any impacts to disproportionately impacted communities and (IV) Coordination with other state agencies, stakeholders, and the public:

The Commission carefully considered the concerns of and potential impacts on communities disproportionately impacted by climate change in the following ways:

Stakeholder engagement: The Division provided multiple ways for the public, local governments, industry, environmental groups, and other stakeholders to provide comment during the development of the proposed rules. Opportunities for input included email, remote stakeholder meeting participation, and in-person meeting participation. Public stakeholder meetings were held from early afternoon until after 6pm in both Denver and Glenwood Springs, to maximize access for working and busy individuals. Language interpretation services for stakeholder meetings were made available (though none were requested during this process).

Potential economic impacts: The Division conducted outreach to determine potential impacts to disproportionately impacted communities for Parts A and B., Section I. With respect to Part A, impacts on local governments and small rural operations were significant considerations in determining whether to require mandatory GHG reporting from domestic wastewater treatment facilities and municipal solid waste landfills with emissions below the reporting threshold in 40 CFR Part 98.

Ultimately, in this rulemaking the Commission elected against mandatory reporting from these source categories, but to allow voluntary reporting. While more robust GHG data has the potential to enhance local climate efforts and ultimately reduce a variety of negative impacts on Colorado's communities, the Division recognizes that providing data can represent an administrative burden, particularly for small operations with fewer staff and serving smaller communities. For both domestic wastewater treatment and municipal solid waste landfill emissions (below the 40 CFR Part 98 threshold) reporting, the Division identified available reporting protocols to minimize the burden of the reporting process for any sources wishing to report voluntarily. In addition to public comments, the Division considered stakeholder comments from organizations representing local governments, local wastewater districts and the Wastewater Utility Council, and conducted outreach to the Solid Waste Association of North America's Colorado Chapter in the drafting of the proposed GHG reporting rule.

For Part B., Section I., Division outreach efforts sought to determine if any manufacturers (large or small) of equipment or small niche end-uses that might be impacted by the proposed HFC reduction rule exist in the state. Based on discussions with industry partners and trade groups, as well as online research and communication with the Colorado Department of Labor & Employment (CDLE), the Division was able to confirm that Trane has a chiller manufacturing facility in Pueblo, Colorado that employs approximately 500 individuals. The potential impacts of Part B., Section I. on this facility and area jobs was carefully considered in the development of Part B, Section I. and the Commission has adopted an innovative solution to protect these important jobs while also achieving necessary climate benefits. Accordingly, the Commission has determined that the HFC-phase out in Part B., Section I. will not result in an accumulation of negative or lack of positive environmental, health, economic, or social conditions in a manner that disproportionately impacts certain communities within the state.

Coordination with other jurisdictions:

Absent federal enforcement regulating HFCs, individual states have adopted, or are in the process of adopting, statutes and regulations phasing out the use of HFCs in manufacturing and end-use products. The U.S. Climate Alliance has drafted a model framework to promote uniformity of HFC regulation. Part B., Section I. is based upon the U.S. Climate Alliance's model framework as are draft rules under consideration in other states.

Additional Considerations:

Having considered all relevant information in the record and those factors set forth in § 25-7-105(1)(e)(VI), C.R.S., the Commission has determined that Parts A and B., Section I. are appropriate measures necessary to implement statewide GHG pollution abatement. The Commission concludes that GHG reporting in Part A and the HFC phase-out in Part B., Section I. will either directly result in health, environmental, and air quality benefits or otherwise enable the Commission and General Assembly to better regulate GHG emissions in the future through a more robust inventory. Furthermore, based on the Division's Final Economic Impact Analysis, the costs of compliance with Parts A and B., Section I. and any negative impacts to Colorado's jobs and economy are considerably outweighed by these benefits. Based on the Division's analysis, Part B., Section I. is anticipated to result in statewide GHG reductions in Colorado of about 560 thousand metric tons CO2e in 2025 and 1.15 million metric tons CO2e in 2030. Additionally, as these regulations will lower GHG emissions and the General Assembly has determined that reducing GHG emissions will result in economic and jobs growth by creating new markets, spurring innovation, and driving investments in low-carbon technologies. The time necessary for compliance under Parts A and B., Section I. reflect consideration of existing state and federal requirements as well as feedback from stakeholders. As described in significant detail, Part A will enable the Commission to better inventory analyze statewide GHG emission sources across diverse sectors and sources by utilizing existing federal reporting requirements in 40 CFR Part 98 and also expanding those requirements. Parts A and B., Section I. are therefore determined to be appropriate and cost-effective.

II. Adopted: August 19, 2021 (Revisions to Regulation Number 22, Part B, Section I.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and -110.5, C.R.S., and the Air Quality Control Commission's ("Commission") Procedural Rules, 5 C.C.R. §1001-1.

Basis

The Commission is amending Regulation Number 22, Part B, Section I., to revise the definitions of "Rigid Polyurethane High-pressure Two-component Spray Foam" and "Rigid Polyurethane Low-pressure Two-component Spray Foam" found in the existing Hydrofluorocarbons (HFC) prohibitions rule (Part B, Sections I.B.40. and I.B.41.) to more accurately describe the noted products or end-uses.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act (Act), specifically § 25-7-105(1), C.R.S., directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102, C.R.S., and that are necessary for the proper implementation and administration of the Act.

§ 25-7-105(1)(e), C.R.S., authorizes the Commission to promulgate implementing rules and regulations consistent with the statewide GHG pollution reduction goals in § 25-7-102(2)(g), C.R.S. In adopting GHG abatement strategies and implementing rules, the Commission is authorized to take into account other relevant laws and rules to enhance efficiency and cost-effectiveness and solicit input from other state agencies and stakeholders on the advantages of different statewide GHG pollution mitigation measures. § 25-7-105(1)(e)(II), (IV), C.R.S. Implementing rules may include regulatory strategies that "enhance cost-effectiveness, compliance flexibility, and transparency around compliance costs." § 25-7-105(1)(e)(V), C.R.S. Further, in promulgating such implementing rules, the Commission is to consider many factors, including, but not limited to: health, environmental, and air quality benefits and costs; the relative contribution of each source or source category to statewide GHG pollution; equitable distribution of the benefits of compliance; issues related to the beneficial use of electricity to reduce GHG emissions; and whether greater or more cost-effective emission reductions are available through program design. § 25-7-105(1)(e)(VI), C.R.S.

§ 25-7-106, C.R.S., provides the Commission "maximum flexibility in developing an effective air quality program and [promulgating] such [a] combination of regulations as may be necessary or desirable to carry out that program." Section 25-7-109(1), C.R.S., authorizes the Commission to adopt and promulgate emission control regulations that require the use of effective practical air pollution controls for each type of facility, process, or activity which produces or might produce significant emissions of air pollutants. An "emission control regulation" may include "any regulation which by its terms is applicable to a specified type of facility, process, or activity for the purpose of controlling the extent, degree, or nature of pollution emitted from such type of facility, process, or activity. . . ." § 25-7-103(11), C.R.S. Emission control regulations may pertain to any chemical compound including GHG pollution and emissions of ozone precursors. *See* § 25-7-109(2)(c), C.R.S.

Purpose

The following section sets forth the Commission's purpose in amending Regulation Number 22, Part B, Section I, and includes the technological and scientific rationale for these amendments:

Part B.I: Amendments to definitions of certain HFC end-uses

The Commission amended the definitions of "Rigid Polyurethane High-pressure Two-component Spray Foam" and "Rigid Polyurethane Low-pressure Two-component Spray Foam" in Regulation 22, Part B, Section I to more accurately describe these products or end-uses. Because the definitions adopted in May 2020 were not technically accurate in describing the end-uses, there was concern the end-uses may not be actually covered under the rule as was intended. The definitions adopted in May 2020 came from the U.S. Climate Alliance's model framework for HFC regulation and were based on language describing the noted end-uses in the preamble to the EPA Significant New Alternatives Policy (SNAP) Program, Rule 21.

Additional Considerations

The following are additional findings of the Commission made in accordance with the Act:

§ *25-7-110.5(5)(b), C.R.S.*

As these revisions exceed and may differ from the federal rules under the federal act, in accordance with § 25-7-110.5(5)(b), C.R.S., the Commission determines:

Part B.I: The Commission amended two definitions in this rule in order to more accurately describe these products or end-uses. These amendments do not alter or change the analysis of these additional considerations under § 25-7-110.5, C.R.S., for Part B, Section I. that was conducted at the time of its original adoption in May 2020.

§ *25-7-110.8, C.R.S.*

To the extent that the § 25-7-110.8, C.R.S., requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(a) These rules are based on reasonably available, validated, reviewed, and sound scientific methodologies and all validated, reviewed, and sound scientific methodologies and information made available by interested parties has been considered.

(b) Evidence in the record supports the finding that the rule shall result in a demonstrable reduction in GHG pollution and/or ozone precursors as transportation co-pollutants and will enable the Commission to satisfy the requirements of §§ 25-7-102, -105(1)(e), -106, and/or -109, C.R.S., as applicable.

(c) Evidence in the record supports the finding that the rule shall bring about reductions in risks to human health and the environment that will justify the costs to government, the regulated community, and to the public to implement and comply with the rule.

(d) The rules are the most cost-effective to achieve the necessary and desired results and reduction in air pollution.

(e) The rule will maximize the air quality benefits of regulation in the most cost-effective manner.

Further, these revisions will include any typographical, grammatical and formatting errors throughout the regulation.

III. Adopted: October 22, 2021

Revisions to Regulation Number 22, Part B, Section II.

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act, §§ 25-7-110 and -110.5, C.R.S., and the Air Quality Control Commission's ("Commission") Procedural Rules, 5 C.C.R. §1001-1.

Basis

In HB 19-1261, now codified in part at §§ 25-7-102(2) and -105(1)(e), C.R.S., the General Assembly declared that "[c]limate change adversely affects Colorado's economy, air quality and public health, ecosystems, natural resources, and quality of life[,]" acknowledged that "Colorado is already experiencing harmful climate impacts[,]" and that "[m]any of these impacts disproportionately affect" certain disadvantaged communities. § 25-7-102(2), C.R.S. The General Assembly also recognized that "[b]y reducing greenhouse gas pollution, Colorado will also reduce other harmful air pollutants, which will, in turn, improve public health, reduce health care costs, improve air quality, and help sustain the environment." § 25-7-102(2)(d), C.R.S.

Consequently, the General Assembly updated Colorado's statewide greenhouse gas (GHG) pollution reduction goals so as to achieve a 26% reduction of statewide GHG by 2025; 50% reduction by 2030; and 90% reduction by 2050 as compared to 2005 levels. § 25-7-102(2)(g), C.R.S. Statewide GHG pollution is defined as "the total net statewide anthropogenic emissions of carbon dioxide [(CO_2)], methane [(CH_4)], nitrous oxide [(N_2O)], hydrofluorocarbons [(HFCs)], perfluorocarbons [(PFCs)], nitrogen trifluoride [(NF_3)], and sulfur hexafluoride [(SF_6)] expressed as carbon dioxide equivalent [(CO_2e)] calculated using a methodology and data on radiative forcing and atmospheric persistence deemed appropriate by the commission." § 25-7-103(22.5), C.R.S.

§ 25-7-105(1)(e), C.R.S., sets forth the framework for developing GHG abatement rules consistent with the statewide GHG pollution reduction goals in § 25-7-102(2)(g), C.R.S. This provision grants the Commission broad authority to regulate GHG emissions in order to accomplish these goals.

In order to evaluate the utilization of, and potential emissions reductions from, GHG best available emission control technologies (BAECT) and best available energy efficiency practices (referred to as best management practices or Energy BMP) in energy-intensive trade-exposed (EITE) stationary sources, the Commission adopted in Regulation Number 22, Part B, Section II, rules governing emission control and energy audits from these sources and requiring a five percent reduction in GHG emissions therefrom.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act (Act), specifically § 25-7-105(1), C.R.S., directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102, C.R.S., and that are necessary for the proper implementation and administration of the Act.

§ 25-7-105(1)(e), C.R.S., authorizes the Commission to promulgate implementing rules and regulations consistent with the statewide GHG pollution reduction goals in § 25-7-102(2)(g), C.R.S. In adopting GHG abatement strategies and implementing rules, the Commission is authorized to take into account other relevant laws and rules to enhance efficiency and cost-effectiveness and solicit input from other state agencies and stakeholders on the advantages of different statewide GHG pollution mitigation measures. § 25-7-105(1)(e)(II) and (IV), C.R.S.

Implementing rules may include regulatory strategies that incentivize development of renewable resources and "enhance cost-effectiveness, compliance flexibility, and transparency around compliance costs." § 25-7-105(1)(e)(V), C.R.S. Further, in promulgating such implementing rules, the Commission is to consider many factors, including, but not limited to: health, environmental, and air quality benefits and costs; the relative contribution of each source or source category to statewide GHG pollution; equitable distribution of the benefits of compliance; issues related to the beneficial use of electricity to reduce GHG emissions; and whether greater or more cost-effective emission reductions are available through program design. § 25-7-105(1)(e)(VI), C.R.S.

§ 25-7-105(1)(e)(IX), C.R.S., authorizes the Commission to require energy-intensive, trade-exposed [(EITE)] stationary sources, "to execute an energy and emission control audit, according to criteria established by the [C]ommission, of the source's operations every five years through at least 2035." The intent of the audit is to determine whether covered sources are employing "best available emission control technologies for [GHG] emissions [(GHG BAECT)] and best available energy efficiency practices [(Energy BMP)]".

§ 25-7-105(1)(e)(XIII), C.R.S., adopted in House Bill 21-1266, directs the Commission to "require a five percent reduction in the [GHG] emissions associated with [EITE] stationary sources that currently employ [GHG BAECT and Energy BMPs], as determined by the Commission, pursuant to [§ 25-7-105(1)(e)(IX), C.R.S.]."

§ 25-7-106, C.R.S., provides the Commission "maximum flexibility in developing an effective air quality program and [promulgating] such [a] combination of regulations as may be necessary or desirable to carry out that program." § 25-7-109(1), C.R.S., authorizes the Commission to adopt and promulgate emission control regulations that require the use of effective practical air pollution controls for each type of facility, process, or activity which produces or might produce significant emissions of air pollutants. An "emission control regulation" may include "any regulation which by its terms is applicable to a specified type of facility, process, or activity for the purpose of controlling the extent, degree, or nature of pollution emitted from such type of facility, process, or activity. . . ." § 25-7-103(11), C.R.S. Emission control regulations may pertain to any chemical compound including GHG pollution. *See* § 25-7-109(2)(c), C.R.S.

Purpose

The Commission adopted Regulation Number 22, Part B, Section II to give effect to the requirements of §§ 25-7-105(1)(e)(IX) and (XII)(B), C.R.S., and to further the reduction of statewide GHG pollution consistent with § 25-7-102(2)(g), C.R.S., as applicable to EITE stationary sources.

§ 25-7-105(1)(e)(IX), C.R.S., authorizes the Commission to require EITE stationary sources, "to execute an energy and emission control audit, according to criteria established by the [C]ommission, of the source's operations every five years through at least 2035." The intent of the audit is to determine whether covered sources are employing GHG BAECT and Energy BMPs. The last audit shall occur in the year 2037.

The audit and GHG emission reduction requirements contained in Part B, Section II are applicable only to stationary sources that principally engage in defined manufacturing activities and have direct GHG emissions equal to or greater than 50,000 tons CO2e per year as reported under 40 CFR, Part 98 and/or Part A of this Regulation Number 22. Based on 2019 data, there are only four stationary sources meeting these requirements: EVRAZ Rocky Mountain Steel's mill in Pueblo, with reported GHG emissions of 305,674 tons CO2e; CEMEX Construction Materials South's Lyons Cement Plant, with reported GHG emissions of 268,643 tons CO2e; GCC Rio Grande's cement manufacturing plant in Pueblo, with reported GHG emissions of 743,403 tons CO2e; and Holcim-Lafarge's cement plant in Florence, with reported GHG emissions of 985,222 tons CO2e.

The fifth highest GHG emission sources in one of these enumerated manufacturing activities reported GHG emissions of approximately 27,000 tons CO2e in 2019.The four EITE stationary sources over 50,000 tons CO2e per year in 2019 remained the only sources over this threshold in 2020 as well. It is notable that, based on 2019 reported data, these four stationary sources contribute approximately 54% of Colorado industrial and manufacturing sector's GHG emissions. Accordingly, this emissions threshold guarantees that the state's largest EITE sources of GHG emissions are employing GHG BAECT and Energy BMPs in their manufacturing processes while appropriately limiting the regulatory burden on smaller sources.

Critical to the success of the GHG BAECT and Energy BMP audit program is the selection of sufficiently rigorous audit protocols and qualified auditors. Accordingly, Section II.C.2. and the associated definitions in Section II.B. establish the minimum qualifications for the auditor and audit team and the criteria and processes by which the audits are to be performed. Under Section II.C.2.a.(v)(A), the Division can reject an auditor if the auditor has a previous or existing relationship with the source that is so pervasive that the auditor would be unable to conduct the audit in an unbiased and independent manner. The Division should consider the extent to which the auditor has advocated on behalf of the EITE stationary source before the Commission; whether the relationship is currently or recently pervasive, compared to a relationship primarily in the past; whether the auditor has primarily acted as an advocate for the EITE stationary source as opposed to a scientific or technical advisor; and whether the work conducted on behalf of the EITE stationary source would, in any way, inhibit the auditor's ability to conduct an independent and unbiased audit.

Prior to executing an audit, the EITE stationary source must submit to the Division for its review and approval of the audit plan, which identifies the audit scope, the audit team and any standards or protocols planned for use in the audit. The Division's review should ensure that the plan is sufficiently rigorous and meets or exceeds national and/or international standards for such audits. Examples of sufficiently rigorous accounting and audit protocols include, but are not necessarily limited to, the GHG Protocol's Corporate Accounting and Reporting Standard (more information available at https://ghgprotocol.org/corporate-standard) and the International Organization for Standardization's (ISO) 14064 and 50001 series (more information available at https://www.iso.org/home.htm).

As set forth in Section II.C.2., the energy and emissions control audit will analyze GHG BAECT for the EITE stationary source's emissions units that emit the top 80% of the stationary source's GHG emissions, and any individual emissions source that represents more than 2% of the emissions from the EITE stationary source. This audit scope is determined by the Division to be broad enough to capture all GHG emission sources at the EITE stationary source except for those considered "de minimis" and provide for a thorough audit of the emissions at the facility. The Energy BMP audit will assess all emission units that account for 80% of the source's energy consumption. This scope ensures that the audit captures the largest emitting and energy consuming emissions units and that the majority of the EITE stationary source's emissions are examined. It is expected that there may be overlap between these two scopes, which is addressed in Section II.C.3.a.(ii)(A)(1).

Section II.C.3. establishes the audit reporting requirements and detailed steps for the GHG BAECT and Energy BMP analyses. These analyses are conducted on a case-by-case basis for the EITE stationary source under review and incorporate certain objective criteria for the auditor and Division to consider. The GHG BAECT analysis and prioritization process will consider technical feasibility of the control for the stationary source, the estimated emission reductions realized with each measure, cost-effectiveness and environmental, economic, and energy impacts. Additionally, consideration should be given to other factors such as existing facility permit limits, limits and emissions data available for similar operations, and air pollution co-benefits to local communities.

Under Section II.C.3.a.(i)., the control technologies and strategies considered during the GHG BAECT analysis should consider fuel switching, waste to heat options, strategic energy management (SEM) options and carbon capture and underground storage or utilization (CCUS). In evaluating fuel-switching as a control technology, the source should consider switching from coal and petroleum coke to a lower-carbon fuel. In evaluating waste to heat options, the source should consider changing raw material inputs in production processes. In evaluating waste to heat options, the source should consider preheating and heat re-use. The Commission understands that certain of these technologies may not yet be ready for employment as GHG BAECT or Energy BMPs at the stationary sources and expects them to be evaluated for technical feasibility if they are "available."

The cost-effectiveness evaluation will include the full lifetime of the measure under consideration and all "net levelized" costs to account for costs and costs avoided—or benefits—that may result from adopting a particular control or efficiency measure. These factors are described in further detail at Section II.C.3.a.(i)(D) for GHG BAECT and II.C.3.a.(ii)(A)(4) for Energy BMPs and should include changes in the annual costs resulting from the control technology/method including energy costs, operations and maintenance costs, productivity (e.g. increased production rate or reduced down-time), product quality (e.g. improved quality or reduced rate of rejects/bad batches).

As detailed in Part B, Section II.C.3.a.(i)(E) for GHG BAECT and Section II.C.3.a.(ii)(A)(5) for Energy BMPs, measures identified in the audit as technically feasible cannot then be eliminated as cost-prohibitive if the cost-effectiveness of the measure is equal to or less than the avoided social cost of GHGs. Further, any direct or indirect energy, economic and environmental impacts for each potential GHG control measure is to be considered. Economic considerations may include a comparison to direct competitors and international markets for the EITE source's final product (i.e. steel or cement). Environmental considerations should include any benefits or detriments that may result from a particular measure. Energy considerations should include direct and indirect energy efficiency benefits or detriments, including changes in demand for offsite electric generation.

The social cost of GHG's cost-effectiveness comparison mechanism ensures that sufficient weight is afforded to the full spectrum of climate impacts from GHG emissions that could be controlled through technically feasible means. As set forth in Part B, Section II.B.41, the social cost of greenhouse gases to be used aligns with that established in § 25-7-110.5(4)(f), C.R.S., through the adoption of House Bill 21-1266. The social cost of GHGs to be used in each GHG BAECT and Energy BMP audit must be consistent with this definition and the Division will review the social cost of GHGs used in the audit recommendations to ensure the values are correctly calculated. Using the social cost of GHGs is an appropriate, objective measure for evaluating potential costs avoided when analyzing the "cost-prohibitiveness" of effective, technically feasible control measures and balancing that against other environmental, energy, or economic impacts, such as competitiveness. This balancing serves to recognize the externalities resulting from GHG emissions that could be avoided through the use of potentially costly control measures and the limited ability of EITE sources to implement those measures if it would render them uncompetitive in the marketplace and therefore risk unintended consequences, including GHG leakage.

Further, Section II.C.3.a(i)(B)(1) sets forth the Commission's intent that EITE stationary sources will consider and fully evaluate the possibility of employing CCUS or utilization as a control measure for any emissions unit with direct emissions of 100,000 tons CO2e and provide that analysis to the Division at least every five-year audit cycle. The analysis must go beyond a superficial examination of whether other similar facilities have successfully employed these technologies and must look at the state of the technology and whether it can be successfully employed at the source under review. If it is technically possible to employ these technologies, they must then be evaluated for other factors such as cost-effectiveness and other direct or indirect impacts, like competitiveness in the marketplace.

The intent of this assessment is to objectively and rationally uncover the strengths and weaknesses of CCUS technology at the facility. The assessment should include economic and technical issues associated with carbon capture technology at the specific facility. A feasibility analysis is expressly not required by this rule, but if a facility has conducted a full feasibility analysis within the last 5 years, that information will satisfy the requirement to provide the information in Section II.C.3.a.(i)(B)(1). In subsequent audit cycles, these reports can be updated instead of recreated.

In the interest of regulatory efficiency, as an alternative to conducting an Energy BMP audit under Sections II.C.2. and 3, the EITE stationary source will be determined to have conducted a qualifying audit and be currently employing Energy BMPs if the stationary source is certified under the EPA Energy Star Program or is registered to the ISO 50001 - standard for energy management. This alternative pathway was adopted because the underlying programs examine and audit the facility's performance as a whole, and are equally or more rigorous and thorough than the Energy BMP audit contemplated in § 25-7-105(1)(e)(IX)(A), C.R.S. The Federal Energy Star Program is a widely accepted "benchmarking" program managed by EPA and requires annual certification that the facility is sufficiently efficient (reaches a score of 75 or higher out of 100).

More information available at: https://www.energystar.gov/industrial_plants/earn-recognition/plant-certification

ISO 50001 is the internationally recognized energy management system developed by the International Organization for Standards which requires certification every 3 years.

More information available at: https://www.iso.org/iso/iso_50001_energy_management_systems.pdf

Both certifications are appropriate alternative means of demonstrating Energy BMP employment as they require rigorous evaluation of an industrial facility's energy performance and the employment of best available energy practices through either benchmarking in the case of Energy Star or certification to a specific set of requirements for holistic energy management of the facility, in the case of ISO 50001.If the EITE stationary source is not certified under EPA's Energy Star Program or ISO 50001, the EITE stationary source must conduct an Energy BMP audit pursuant to Section II.C.2. and 3.

The GHG BAECT and Energy BMP Recommendation

As described in Section II.C.3.a.(iii), the auditor's recommendation must include: (1) The auditor's recommendation on the most effective technology or strategy or suite of control technologies as determined under Section II.C.3.a.; (2) a list of all control measures with levelized costs less than or equal to $0 as determined in Section II.C.3.a.(i)(D); and (3) recommendations on options that provide greater pollution reduction co-benefits to communities surrounding the EITE stationary source.

The GHG BAECT and Energy BMP recommendation in the audit report serves as the foundation for the GHG BAECT and Energy BMP determination to be made by the Division and ultimately finalized by the Commission. This recommendation consists of the technologies identified through the audit process that would be considered "best" to control and reduce GHG emissions from the emissions units included in the audit scope. The recommendation is documented in the audit report. The GHG BAECT recommendation may be a single technology or reduction measure for the emission unit or a suite of technologies or measures if multiple measures are able to achieve greater reductions and are the same or similar cost-effectiveness. This approach creates potential for a greater reduction at the same or similar cost to the EITE stationary source, as well as opportunities for increased consideration and inclusion of technologies or measures that have significant co-benefits. The energy BMP recommendation will be issued as a list of the most effective energy efficiency measures for the EITE stationary source for the energy consumption sources included in the audit scope. Both the GHG BAECT and energy BMP recommendations will include a list of measures that have a levelized cost of equal to or less than $0 for the Division's consideration.

The GHG BAECT and Energy BMP recommendation will document the total cumulative GHG emissions intensity rate for all emission units included in the audit scope. This will be calculated by identifying each emissions unit's annual GHG emissions per final product from the EITE source then summing all audited emission unit intensity rates for a total GHG BAECT and Energy BMP GHG emissions intensity rate for the EITE stationary source. If any energy efficiency measure achieves additional GHG reductions for the facility it shall be included in the GHG BAECT emission intensity rate per final product of the EITE stationary source.

The audit report must also show the calculations and recommendation for the total mass emissions from emission units that were not included in the audit scope. This number is integral to the annual emissions limit calculation for each EITE stationary source because the emissions limitation must include all emissions from the facility.

The GHG BAECT and Energy BMP Intensity Rate Determination

The Division will analyze and review the audit report's GHG BAECT and Energy BMP intensity rate recommendations and associated analyses for all emission units included in the audit scope and make a final recommendation to the Commission to establish the GHG BAECT and Energy BMP GHG emissions intensity rate for the EITE stationary source. The Commission may ask questions, require additional information, or grant approval to the Division-determined rate for the facility. The Division will strive to incorporate these briefings into existing briefings or proceedings before the Commission.

After receiving the audit report, the Division's determination will be based on the audit recommendation and the Division may select either the top control identified or a suite of controls that meet certain, enumerated criteria. The Division's GHG BAECT and Energy BMPs determination for each emissions unit or energy-consuming source within the audit scope will include: (1) The specific control or suite of controls selected as GHG BAECT (Section II.d.1.b.) and Energy BMPs (Section II.D.1.c.); (2) the final GHG BAECT and energy BMP intensity rate for the EITE stationary source (Section II.D.1.b.(iv)); and (3), in addition to any controls selected as GHG BAECT and/or Energy BMPs, all controls found to have a net levelized neutral cost over five (5) years from operational date, unless doing so would impose an unreasonable burden to the EITE stationary source as determined by the Division and based upon findings in the audit report (Sections II.D.1.b.(ii) and II.d.1.c.(ii)).

The GHG BAECT and Energy BMP intensity rate is determined from the GHG BAECT analysis for each piece of GHG emitting equipment to calculate a cumulative GHG BAECT and energy BMP Intensity Rate for the facility. This GHG BAECT and energy BMP intensity rate represents a single, cumulative rate for all GHG emitting equipment included in the audit scope, for both GHG BAECT and energy BMPs. This intensity rate does not include any GHG emitting equipment not included in the audit scope.

The calculation is as follows:

> GHG BAECT & Energy BMP Intensity Rate Determination = Σ (CO2e per tons of facility product for each emission unit in audit scope)

Non-GHG BAECT Emissions Calculation

During the audit, the mass total of GHG emissions from the GHG emitting equipment that was not included in the audit scope, or "Non-GHG BAECT emissions," shall be determined. Non-GHG BAECT emissions are calculated by subtracting the reported emissions from units evaluated for GHG BAECT from the facility annual emissions at the time of the first audit. Once reviewed and approved by the Division and Commission, this mass total will remain fixed. This number will be used in calculating the annual emissions limitation for each EITE stationary source.

The calculation is as follows:

Non-GHG BAECT Emissions = Total direct emissions from the most recent year reported - (reported emissions from the units evaluated for GHG BAECT)

Annual Emissions Limitation Determination

The annual emissions limit must consider all GHG emissions from the EITE stationary source. The direct GHG emitting units that were not included in the audit scope must be included in calculating the limit. Therefore, the GHG BAECT and energy BMP intensity rate determined by the Division must be converted to mass by using the year's production total. *This is done by multiplying the units of production for the EITE stationary source for the year, by the GHG BAECT and energy BMP intensity rate. This results in a mass emissions total which represents the mass emissions from the facility operating all GHG BAECT and energy BMPs during that year. The Non-GHG BAECT emissions are then added to this total, resulting in a mass-based emission total for the EITE stationary source. This is then multiplied by 95% in order to affect the 5% reduction required by statute, the end result of which is the EITE stationary source's "annual emission limit" for the year under review.* Calculation of and compliance with this annual emissions limitation is required beginning in the third year after the audit year, onward. The five percent reduction must be achieved in addition to any subsequent lower GHG BAECT and Energy BMP intensity level determined for the EITE stationary source.

The calculation is as follows:

Annual Emission Limit for Compliance Year in tons CO2e = (((GHG BAECT & Energy BMP Intensity Rate Determination) * (Compliance Year Facility Product)) + (Non-GHG BAECT Determination))*0.95

Compliance Year Facility Product = tons of final product reported to Division by EITE Stationary Source

This calculation links the mass based number to total production and is appropriate for EITE industries. This is a unique set of industries, where there is the potential for "leakage"- that is, for production to move to other locations outside of Colorado, and because of this, state statute specifically treats EITE industries distinctly from other GHG emitting industries. This mass based approach to production may not be appropriate for the industrial sector as a whole or other sectors.

This approach gives effect to § 25-7-105(1)(e)(XIII)(B), C.R.S., because it would be consistent with the requirements of § 25-7-105(1)(e)(IX) and would affect a 5% reduction in GHG emissions "associated with [EITE] sources that currently employ [GHG BAECT] and [Energy BMPs], as determined by the [C]ommission...." Pertinent to these reduction requirements, where an EITE source is employing GHG BAECT and Energy BMPs, § 25-7-105(1)(e)(IX) limits the Commission's ability to "impose a direct non-administrative cost on the source directly associated with at least [95%] of the source's [GHG] emissions attributable to manufacturing a good in the state[.]" § 25-7-105(1)(e)(IX)(A), C.R.S. Thus, in order to give effect to this limitation and the emissions reduction required in § 25-7-105(1)(e)(XIII)(B), the 5% reduction requirements must apply to GHG emissions "associated with the [EITE] sources" and "attributable to manufacturing a good in the state."

Use of the emissions limitation approach set forth in GEMM for EITE sources accomplishes this suite of legislative directives. It requires EITE sources to reduce GHG emissions "attributable to manufacturing a good in the state by 5%." It does not impose non-administrative costs on the other 95% of GHG emissions from the source. This provides the EITE sources flexibility to mitigate the costs of the required reductions and provides an incentive to improve efficiency and reduce emissions. Importantly, it accomplishes all this while allowing EITE sources to adjust production levels based on market forces and meet demand with an annual mass emissions limitation at a GHG intensity of 5% below that accomplished through the employment of GHG BAECT and Energy BMPs without requiring the source to reduce production to accomplish these reductions. This balances the need for substantial and lasting GHG emissions reductions from EITE sources while recognizing the treatment afforded these particular sources by the General Assembly.

Annual Emission Limit Compliance

Pursuant to Sections II.E.1.b. and II.F.2., EITE stationary sources are required no later than the third year after each audit to achieve and maintain an additional mass-based five percent GHG emission reduction below emissions that would be achieved through the employment of GHG BAECT and Energy BMPs, unless an interim emission rate is established under Section II.E.1.c. To demonstrate compliance, EITE stationary sources must submit an annual compliance report with the information set forth in Section II.G.1., including the previous year's GHG emissions; units of product produced; and the GHG BAECT and energy BMP intensity rate determination. The EITE stationary sources must also maintain records for 10 years.

Compliance Pathways

To give effect to the legislative directive § 25-7-105(1)(e)(XIII)(B), C.R.S., and in accordance with the guidance concerning implementing rules in §§ 25-7-105(1)(e)(II), (V), and (VI), C.R.S., in Section II.F.1.c. the Commission provides three pathways to achieve the required emission intensity rate. This includes any one or combination of: direct on-site reductions (Section II.F.1.a.(i)); surrendering reduction credits created by GHG reductions at other regulated sources (Section II.F.1.a.(ii)); and utilization of retail distributed generation or net metering renewable projects that reduce GHG emissions from the facilities' energy use for which RECs have been retired (Section II.F.1.a.(iii)). For the utilization of renewable energy, the RECs retired must be from Colorado and retired in the year generated. Regardless of the compliance pathway utilized, the EITE stationary source must assure that any significant co-benefits are achieved at the EITE stationary source pursuant to Section II.F.1.b.

Utilization of Renewable Energy Credits for compliance cannot exceed the annual generation of the distributed generation system and cannot be used for compliance with the Annual Emissions Limitation for more than the required 5% reduction, nor can they be counted toward the 20% emissions reduction required to exempt the source from further 5% reduction requirements, as those are to be based on direct emissions reductions from the facility. The megawatt hour (MWh) of distributed generation in avoided GHG emission value shall be based on the relevant electricity provider's reported annual system emissions, calculated in a manner consistent with the Division's AQCC-approved Clean Energy Plan guidance, and be adjusted annually to account for the changing emissions profile of the generation fleet of the source's electricity supplier. This is because a system MWh avoided today may be more emissions intensive than a system MWh avoided in the future.

The Commission recognizes that large capital-intensive emissions reduction projects such as large-scale carbon capture, utilization, and storage may take an extended time to complete. The Commission directs staff to develop a proposal to allow an alternative compliance pathway with an extended timeline, with sufficient guardrails to ensure that cumulative GHG emissions reductions will be greater than those achievable with short-term measures, and that communities near the facility will realize appropriate co-benefits.

Points of Compliance

There are a number of discrete requirements with which the covered sources must demonstrate compliance over the course of each audit cycle. These include:

- Submission of the Audit Plan at least 120 days prior to commencing the audit (Section II.C.2.);
- Submission of the Audit Report no later than December 31, 2022 and every five years thereafter (Section II.C.1.a.);
- Submission and execution of the Compliance action plan within 120 days of the Commission's approval of the GHG BAECT and Energy BMP determination (Section II.F.1.);
- Compliance with annual emission limits established in the GHG BAECT and Energy BMP determination by the third year after each audit year (Sections II.E.1.b. and II.F.2); and
- Submission of annual compliance certification by May 1 beginning in 2026 (Section II.G.1).

Mechanisms for Assuring Compliance

GEMM is generally enforceable as a provision of part 1 of the Act, *see* § 25-7-105(1)(e)(IX) (requiring EITE stationary sources to conduct GHG BAECT and Energy BMP audits), and as an emission control regulation promulgated by the Commission. *See* § 25-7-115(1)(a), C.R.S. Accordingly, noncompliance with GEMM is subject to the injunctive and civil penalty authority of the Division and Commission. *See* §§ 25-7-121 and -122, C.R.S. In addition to these general authorities, f § II.K.1.a. provides an alternative means of addressing noncompliance with the emission reduction requirements of GEMM where the EITE stationary source is utilizing GHG credits to comply. Section II.K.1.a. provides the source an opportunity to rectify any shortcomings in emission reduction requirements under GEMM by surrendering three GHG credits for every ton emitted by the source in excess of its annual emission limit.

Co-benefits

The treatment of co-benefits in the evaluation and determination of co-benefits in the audit and subsequent effects on the Section II.F. compliance pathways and is affected through three mechanisms:

1. In Section II.C.3.a.(i)(G) for BAECT and Section II.C.3.a.(ii)(A)(7) for BMPs, the auditor must evaluate and document expected air quality co-benefits of any BAECT or BMP measure assessed;
2. In Section II.C.3.a.(iii)(A)(4) for BAECT and Section II.C.3.a.(iii)(B)(3) for BMPs, the auditor's recommendation must include as a BAECT and/or BMP the option that provide greater co-benefits to the surrounding communities where the top options are otherwise comparable in terms of cost-effectiveness; and
3. In Section II.F.1.b., where an EITE source complies with the annual emission limit, it must also achieve the co-benefits to the local community where "the measure(s) determined to be GHG BAECT and/or energy BMPs for an emission unit also are anticipated to result in significant co-benefits[.]"

As to this final point, the express intent is to ensure that any localized co-benefits that would be realized through implementation of the specific BAECT or BMPs identified in the audit are still realized for the local community, regardless of which compliance pathway the source utilizes. This is explicitly intended to benefit local communities and particularly those disproportionately impacted by climate change and other air quality issues and is in response to input from communities and local governments.

The quantification of any co-benefits under Sections II.C.3.a.(i)(G) and II.C.3.a.(ii)(A)(7) must include establishment of a baseline for the relevant pollutant(s) and quantification of net co-benefits from the control technologies and strategies below or above the baseline. The baseline shall be determined based on the best available information, including monitored emissions, if available, or reported emissions of the relevant pollutant(s) at the time of the audit.

GHG Credit Accounting and Trading Program for EITE Stationary Sources

§ 25-7-105(1)(f)(I)(C), C.R.S., defines "trading program" as "a commission-adopted regulatory program that allows for regulated sources to meet their greenhouse gas compliance obligations under subsection (1)(e) of this section through the creation, purchase, acquisition, or exchange of, or other commercial-type transaction involving, a GHG credit with other regulated sources." § 25-7-105(1)(f)(I)(A), C.R.S., defines "regulated source" as "a source of [GHG] that is subject to a rule adopted by the [C]ommission under [subsection 25-7-105(1)(e)] that imposes specific and quantifiable [GHG] reduction obligations upon that source or group of sources."

An accounting and "trading program" for GHG credits will be developed by the Division, which can be utilized by EITE sources covered by GEMM. The trading program will serve as one pathway to complying with GHG emissions limitations and will allow trading of GHG reductions while also ensuring co-benefits of reducing localized harmful air pollutants at the EITE sources. This is achieved by separately determining what reductions in harmful air pollutants will be achieved at the source through the use of GHG BAECT and requiring that these emission reductions are achieved regardless of how the EITE complies to reduce its GHG emissions.

GHG credits issued by the Division will serve as the mechanism for the trading program. These GHG credits must be utilized for the trading program and represent a GHG emission reduction of one metric ton of CO2e in Colorado, and be real, additional, quantifiable, permanent, verifiable and enforceable. The Act authorizes the Commission to adopt this program through its general rulemaking authority, its authority to adopt implementing rules for GHG pollution reduction, and specific authority to adopt an accounting and trading program as established under House Bill 21-1266.*See* §§ 25-7-106(1) (granting the Commission "maximum flexibility in developing an effective air quality control program and [the authority to] promulgate such combination of regulations as may be necessary or desirable to carry out that program"); -105(1)(e)(II) (granting the Commission broad authority to adopt implementing rules to affect GHG emissions reductions); -105(1)(e)(V) (implementing rules for GHG reductions should enhance cost-effectiveness and compliance flexibility and transparency around compliance costs); -105(1)(e)(IX)(A) (EITE sources should be provided "a pathway to obtain equivalent lower-cost emission reductions at other regulated sources to satisfy their compliance objectives"); and -105(1)(f) (granting the Commission authority to establish GHG credit trading program between "regulated sources," and specifically to implement § 25-7-105(1)(e)(IX)). The program accords with the Commission's authority by allowing EITE sources pathways to accomplish reduction requirements at other regulated sources using an accounting and trading program through which the Division can track emission reductions and trades, prevent double-counting of GHG emission reductions, and identify EITE sources that adversely affect disproportionately impacted communities through emissions of locally harmful air pollutants.

Importantly, the accounting and trading program applies only to EITE stationary sources subject to the audit and GHG emission reductions in GEMM. However, given the authority granted to the Commission in § 25-7-105(1)(f), it is possible that this program may serve as a model for a future, more broadly applicable GHG credit trading program for the industrial manufacturing sector. Should that arise, the Commission may consider how EITE sources should be incorporated into the broader program at that time. The current approach recognizes the directive in statute that EITE sources be provided "a pathway to obtain equivalent lower-cost emission reductions at other regulated sources to satisfy their compliance obligations" while also recognizing EITE sources would initially be the only "regulated sources" as that term is defined, and therefore the only sources eligible to participate in the trading program until additional GHG sources in Colorado meet this definition.

Based on these tenets, Section II.I. sets out provisions establishing an accounting system to track GHG reduction credits. These provisions task the Division with establishing the accounting system. An EITE source seeking eligibility to trade credits must first apply and have the Division create a compliance account for the EITE source. This application for an account must be submitted to the Division within 30 days after approval of the EITE source's BAECT and Energy BMP determination. Any EITE source the Division determines adversely affects disproportionately impacted communities through emission of locally harmful air pollutants must be identified by the Division in the accounting system.

Only GHG credits meeting the definition set forth in Section II.B.22 may be traded in the accounting system. Pursuant to this definition a "GHG credit" represents a GHG emission reduction of one metric ton of CO2e that is real, additional, quantifiable, permanent, verifiable and enforceable. To track such credits, the Division is directed to assign each credit a unique identifier (such as a serial number) and, as further directed in Section II.F.1.a.(ii), only issued in the tracking system after the underlying emission reduction has been demonstrated.

Sections II.G. and II.H. are designed to ensure that EITE stationary sources conduct regular reporting to demonstrate compliance with the audit requirements in Section II.C. and emissions reduction requirements in Section II.F. and maintain all pertinent records.

The Commission determined that the audit procedures and compliance requirements set out in Part B, Section II, establish the criteria by which the Commission can determine, on a five-year basis, whether EITE stationary sources are employing GHG BAECT and energy BMP. The Commission has determined the audit process is cost-effective and reasonable to achieve these ends.

Additional Considerations

The following are additional findings of the Commission made in accordance with the Act:

§ *25-7-110.5(5)(b), C.R.S.*

As these revisions exceed and may differ from the federal rules under the federal act, in accordance with § 25-7-110.5(5)(b), C.R.S., the Commission determines:

(I) Any federal requirements that are applicable to this situation with a commentary on those requirements;

EITE Entities are required to report GHG emissions under existing federal regulations. Some EITE stationary sources may be required to conduct a GHG "best available control technology" or "BACT" analysis as part of a Prevention of Significant Deterioration permitting action unrelated to the requirements of these rules. However, there are no current federal regulations requiring these entities to conduct GHG BAECT and energy audits or to reduce GHG emissions as required under this rule.

(II) Whether the applicable federal requirements are performance-based or technology-based and whether there is any flexibility in those requirements, and if not, why not;

EITE Entities are required to report GHG emissions under existing federal and state regulations. Some EITE stationary sources may be required to conduct a GHG "best available control technology" or "BACT" analysis as part of a Prevention of Significant Deterioration permitting action unrelated to the requirements of these rules. Those BACT evaluations are technology-based. However, there are no current federal regulations requiring these entities to conduct GHG BAECT and energy audits or reduce GHG emissions as required under this rule.

(III) Whether the applicable federal requirements specifically address the issues that are of concern to Colorado and whether data or information that would reasonably reflect Colorado's concern and situation was considered in the federal process that established the federal requirements;

Federal BACT analyses under PSD permitting are separate and distinct from the GHG BAECT analysis adopted in this Part B, Section II. in both its scope and purpose. Under federal PSD permitting, GHG emissions cannot alone trigger a BACT analysis, though the permitting authority may evaluate GHG controls for "anyway" sources that trigger PSD permitting requirements by exceeding other criteria pollutant thresholds. *See Air Regul. Grp. v. E.P.A*., 573 U.S. 302, 333–34 (2014). This Part B, Section II. in contrast is adopted pursuant to specific legislative directive to evaluate GHG BAECT and Energy BMPs; there are no applicable federal requirements in this regard.

(IV) Whether the proposed requirement will improve the ability of the regulated community to comply in a more cost-effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later;

This section gives meaningful effect to §§ 25-7-105(1)(e)(IX) and (XIII), C.R.S., and provides regulated entities flexibility to identify and cost-effectively employ emissions control technologies BAECT and energy efficiency measures to reduce GHG emissions so long as they constitute GHG BAECT and Energy BMPs. Regulated entities that demonstrate effective employment of BAECT and Energy BMPs are afforded certainty with respect to direct non-administrative costs associated with ninety-five percent of the source's GHG emissions and control over the means of otherwise reducing GHG emissions to comply with § 25-7-105(1)(e)(XIII)(B), C.R.S.

(V) Whether there is a timing issue which might justify changing the time frame for implementation of federal requirements;

There are no applicable federal requirements that create any timing issues. Part B, Section II. allows regulated entities a reasonable time to comply with the audit, any resulting compliance action plan, and GHG emission reduction requirements and allows opportunities for alternative compliance.

(VI) Whether the proposed requirement will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth;

Part B, Section II. affords regulated entities significant flexibility for meeting GHG emission reduction requirements. Furthermore, EITE entities are afforded the ability to affect required reductions through alternative compliance measures where needed. As such, regulated entities are afforded a reasonable margin for accommodation of uncertainty and future growth. The three pathways provided for EITE stationary sources to accomplish the 5% emissions reductions in Sections II.E. and II.F. and as required under § 25-7-105(1)(e)(XII)(B), C.R.S., provide affected sources flexibility to accommodate uncertainty and future growth.

(VII) Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources;

All qualifying EITE entities are equally subject to the audit and action plan requirements and the audits account for the specifics of the EITE stationary source in question. Likewise, all regulated entities are afforded opportunities to select and apply BAECT and energy BMPs that work for the specific source and account for environmental, economic, and energy concerns. Furthermore, the five percent GHG emission reduction requirements in Sections II.E. and II.F. are equally applied to all qualifying EITE stationary sources. Where available, opportunities to maximize co-benefits to communities near or around the stationary source should be prioritized.

(VIII) Whether others would face increased costs if a more stringent rule is not enacted;

The General Assembly has acknowledged that climate change impacts Colorado's economy and directed that GHG emissions should be reduced across all sectors of our economy. Colorado has established specific GHG reduction goals. Reductions not achieved in one sector will require measures in other sectors of the economy to achieve the state's GHG reduction goals. However, the General Assembly further provided requirements that energy-intensive and trade-exposed entities demonstrate use of BAECT and energy BMPs through an audit process and limited the Commission's ability to impose additional reductions on at least ninety-five percent of the source's GHG emissions where such measures are effectively employed. See § 25-7-105(1)(e)(IX), C.R.S. With respect to the 5 percent emission reductions required of EITE entities employing GHG BAECT and energy BMPs under § 25-7-105(1)(e)(XIII)(B), C.R.S., any emission reductions not timely realized from these entities would, in turn, require greater emission reductions from other sources in the industrial and manufacturing sector in order to achieve the twenty percent sector-wide requirements by 2030 set forth in § 25-7-105(1)(e)(XIII)(A), C.R.S.

(IX) Whether the proposed requirement includes procedural, reporting, or monitoring requirements that are different from applicable federal requirements and, if so, why and what the "compelling reason" is for different procedural, reporting, or monitoring requirements;

Part B, Section II. gives effect to the General Assembly's adoption of 25-7-105(1)(e)(IX), C.R.S., which includes a requirement for energy-intensive trade-exposed entities to execute energy and emission control audits that are not required under federal regulations. This is a compelling reason, as these audits will inform the state's strategies and future regulations to accomplish the statewide GHG pollution reduction goals and address the impacts of climate change set forth in § 25-7-102(2), C.R.S. and sector-specific emission reductions under § 25-7-105(1)(e)(XIII), C.R.S.

(X) Whether demonstrated technology is available to comply with the proposed requirement;

Part B, Section II does not require the use of any specific technology but instead serves as a mechanism to evaluate the control technologies and energy efficiency practices regulated entities are employing and to determine the effectiveness of those measures already in use. The GHG BAECT and Energy BMP audits are used to conduct this evaluation and must include analyses of, but not necessarily implementation of, transformative technologies. All GHG BAECT and energy BMP determinations will be based on demonstrated and available technologies.

(XI) Whether the proposed requirement will contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain;

This rule will enable the Commission to determine whether EITE stationary sources are employing GHG BAECT and Energy BMPs to effectively minimize GHG emissions from regulated facilities. EITE sources will be required to comply with the annual emission limits established pursuant to this audit process. The GHG emissions reductions from this rule are expected to help Colorado achieve the statewide GHG pollution reduction goals in § 25-7-102(2)(g), C.R.S., and the sector-specific GHG emission reductions set forth in § 25-7-105(1)(e)(XIII), C.R.S. Anticipated reductions in co-pollutants are expected to have positive health benefits for the people of Colorado.

(XII) Whether an alternative rule, including a no-action alternative, would address the required standard.

This rule implements the statutory requirements of §§ 25-7-105(1)(e)(IX) and (XIII)(B), C.R.S. Alternatives exist for how to accomplish these requirements, including different emission thresholds for qualifying entities, different standards for evaluating GHG BAECT and Energy BMPs, and the provision of no or differing means of alternative compliance as well as different timing requirements for emission reductions. The Commission determined that Part B, Section II. appropriately gives effect to the statutory requirements and is consistent with the statewide and sector-specific GHG pollution reduction goals. A no-action alternative is not available under § 25-7-105(1)(e), C.R.S.

Findings of Fact

To the extent that § 25-7-110.8, C.R.S., requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based on reasonably available, validated, reviewed, and sound scientific methodologies and all validated, reviewed, and sound scientific methodologies and information made available by interested parties has been considered.

(II) Evidence in the record supports the finding that the rule shall result in a demonstrable reduction in GHG pollution and co-pollutants and will enable the Commission to satisfy the requirements of §§ 25-7-102, -105(1)(e), -106, and/or -109, C.R.S., as applicable.

(III) Evidence in the record supports the finding that the rule shall bring about reductions in risks to human health and the environment that will justify the costs to government, the regulated community, and to the public to implement and comply with the rule.

(IV) The rules are the most cost-effective to achieve the necessary and desired results and reduction in air pollution.

(V) The rule will maximize the air quality benefits of regulation in the most cost-effective manner.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

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Office of the Attorney General

Tracking number: 2021-00440

Opinion of the Attorney General rendered in connection with the rules adopted by the

Air Quality Control Commission

on 10/22/2021

5 CCR 1001-26

REGULATION NUMBER 22 COLORADO GREENHOUSE GAS REPORTING AND EMISSION REDUCTION REQUIREMENTS

The above-referenced rules were submitted to this office on 10/28/2021 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.

November 09, 2021 15:07:14

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Prevention Services Division (1009, 1015, 1016 Series)

CCR number

6 CCR 1016-2

Rule title

6 CCR 1016-2 PREVENTION, INTERVENTION, AND TREATMENT PROGRAMS FOR CHILDREN AND YOUTH 1 - eff 12/15/2021

Effective date

12/15/2021

[Publication Instructions: Delete entire rule]

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Prevention Services Division

PREVENTION, INTERVENTION, AND TREATMENT PROGRAMS FOR CHILDREN AND YOUTH

6 CCR 1016-2

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

PART 1. GENERAL PROVISIONS

1.1 Statutory Authority.

These regulations are promulgated pursuant to section 25-20.5-101, et. seq., C.R.S.

1.2 Definitions.

(1) "Department" means the Colorado Department of Public Health and Environment.

(2) "Division" means the Division of Prevention and Intervention Services for Children and Youth.

(3) "Executive Director" means the executive director of the Colorado Department of Public Health and Environment.

(4) "Prevention, intervention, and treatment program" means a program that provides prevention, intervention, or treatment services. Prevention, intervention, and treatment programs shall include those within the Division, and within the Department and in other state departments, as identified by the Division, using the criteria in Section 2.2 below.

(5) "Prevention, intervention, and treatment services" means services designed to promote the well-being of children and youth and their families by decreasing high-risk behaviors, strengthening healthy behaviors, and promoting family stability.

(a) "Prevention services" means proactive, interdisciplinary efforts to empower individuals to choose and maintain healthy life behaviors and lifestyles, thus fostering an environment that encourages law-abiding and non-troubled behavior.

(b) "Intervention services" means proactive efforts to intervene at early signs of problems to stop disease, reduce crises and to change problem behaviors.

(c) "Treatment services" are individualized care services to treat and rehabilitate individuals and/or groups in crisis situations and to aid in changing problem behaviors.

(6) "State Plan" means the state plan for the delivery of prevention, intervention, and treatment services to children and youth throughout the state.

(7) "Tony Grampsas Youth Services (TGYS) Board" means the board created pursuant to section 25-20.5-201, C.R.S.

1.3 Desired Program Outcomes.

Prevention, intervention, and treatment programs are designed to address one or more of the following desired outcomes:

(1) All infants and children thrive;

(2) All children are ready for school;

(3) All children and youth succeed in school;

(4) All youth choose healthy behaviors;

(5) All youth avoid trouble/illegal behavior;

(6) All children live in caring and supportive families; and

(7) All children and youth live in safe and supporting communities.

PART 2. DEPARTMENT AND DIVISION RESPONSIBILITIES

2.1 Applicability.

This Part 2 applies to the Department and Division.

2.2 Criteria for Determining Whether a Program Constitutes a Prevention, Intervention, and Treatment Program for Children and Youth.

(1) The criteria listed in paragraphs (a) through (d) of this subsection shall be used to determine whether a program qualifies as a "prevention, intervention, and treatment program" for the purposes of section 25-20.5-106 (2)(e) C.R.S. The program:

(a) Is operated by or funded through a state agency;

(b) Provides one or more of the services listed under 1.2 (5);

(c) Is designed to address one or more of the outcomes listed under 1.3; and

(d) Is not a juvenile program operated by the Division of Youth Corrections in the Department of Human Services, a program operated for juveniles in connection with the state judicial system, or a program pertaining to out-of-home placement of children pursuant to title 19, C.R.S.

(2) In addition, the Division may review any pertinent information submitted by the program under review.

PART 3. STATE PLAN

3.1 Applicability.

This part 3 applies to the Department, the Division, and any other person that reviews the state plan.

3.2 Review of state plan.

(1) The Division shall review the state plan biennially. The Division shall complete the review by no later than March 31st biennially beginning in the year 2003.

(2) The Division review shall include, but not be limited to:

(a) Holding at least two public meetings to receive input from members of the public and from state agencies and entities operating preventing, intervention, and treatment programs; and

(b) Ensuring the state plan provides the most efficient and effective delivery of prevention, intervention, and treatment services throughout the state, and meets the following minimum requirements:

i. Target and prioritize community prevention, intervention, and treatment service needs throughout the state;

ii. Specify the standards for measurable outcomes anticipated to be achieved by prevention, intervention and treatment programs that receive state and federal funds and the outcomes to be achieved through the coordination of said prevention, intervention, and treatment programs;

iii. Identify all state and community-based prevention, intervention, and treatment programs that are receiving state and federal funds during the fiscal years for which the plan is submitted and the schedule for review of said prevention, intervention, and treatment programs; and

iv. Identify the methods by which the Division shall encourage collaboration at the local level among public and private entities, including but not limited to private for-profit and nonprofit providers and faith-based service providers, in providing prevention, intervention, and treatment services.

3.3 Submittal Of State Plan

(1) If the Division revises the state plan during a biennial review, the Division shall submit the revised state plan to the governor, the Tony Grampsas Youth Services Board, and the executive director of the Department for approval no later than June 30th after the review was complete.

(2) The Division shall provide a copy of any approved revised state plan to the board of health, general assembly, and each state department that operates a prevention, intervention, and treatment program, within thirty (30) days of approval of the revised state plan by the governor, the Tony Grampsas Youth Services Board, and the executive director of the Department.

(3) The Division shall place the approved revised state plan on the internet within 30 days of approval of the revised plan by the governor, the Tony Grampsas Youth Services Board, and the executive director of the Department.

(4) The Division shall provide copies of the approved state plan and approved revised state plans to any person upon request.

PART 4. PREVENTION, INTERVENTION, AND TREATMENT PROGRAM REPORTS

4.1 Applicability.

This part 4 applies to each state agency that operates or uses state or federal funds to operate a prevention, intervention, and treatment program.

4.2 Each state agency that operates a prevention, intervention, and treatment program shall annually submit a report to the Division within thirty (30) days of either: the beginning of the contract period for which the program receives money or the beginning of the fiscal year for which the state agency receives funding. The report shall include the following information for each prevention, intervention, and treatment program operated by the state agency:

(1) The name of the agency, the name of the program, the name of the unit where the program is housed, contact information for the person managing the program;

(2) The statutory authority, funding source, beginning and ending dates of funding, and the amount of funding for the program;

(3) The general parameters and a written description of the program not to exceed 250 words; and

(4) Specific information regarding the program, including, but not limited to:

(a) The overall goal or purpose of the program,

(b) Primary problem area(s) to be addressed,

(c) The population to be served by the program,

(d) The geographic area(s) to be served by the program,

(e) The prevention, intervention and treatment services to be provided by the program, and

(f) The specific, measurable outcomes to be achieved by the program.

4.3 Each state agency using state or federal monies to fund local prevention, intervention, and treatment programs or statewide prevention, intervention and treatment initiatives shall annually submit to the Division a description of each prevention, intervention, and treatment program funded, which includes, but is not limited to:

(1) The name of the agency and the name of the program funded, address, contact information and type of entity for each program receiving funds;

(2) The amount awarded and beginning and end date of each award, and prior year funding;

(3) A written abstract or summary of the program or project not to exceed 100 words; and

(4) Specific information regarding the program, including:

(a) The overall goals or purpose of the program,

(b) Primary problem area(s) to be addressed,

(c) The population to be served by the program,

(d) The geographic areas(s) to be served including a list of counties receiving services,

(e) The prevention, intervention, and treatment services to be provided, and

(f) The specific, measurable outcomes to be achieved by the program. The above information shall be submitted to the Division within 30 days of notice of grant award to the agency receiving funding.

4.4 At the close of the fiscal year for each of the programs referenced in paragraph 43 above, each state agency funding these programs shall, on behalf of these programs, submit evidence of the prevention, intervention, and treatment program's progress in meeting its stated outcomes and goals during the preceding fiscal year and in previous fiscal years, depending on how long the prevention, intervention, and treatment program has been in operation, including, but not limited to:

(1) Sources from which the program received funding and amount received from each source;

(2) Number of statewide initiatives and local programs funded;

(3) A description of the population served by the program; and the total number of people receiving services during the previous year;

(4) The services provided by the program during the previous year;

(5) The program's progress in meeting stated goals and outcomes for the previous year; and

(6) A list of any entity (ies) collaborating in the delivery of prevention, intervention, and treatment services through the program.

The above information shall be submitted to the Division within ninety (90) days of the close of the fiscal year for the program, in a format to be established by the Division. The state agency shall combine like-kind programs into a single program report based upon guidance developed by the Division.

Part 5. Uniform, Minimum Standards

5.1 Applicability.

This part 5 applies to state and federally-funded prevention, intervention, and treatment programs for children and youth.

5.2 Each prevention, intervention, and treatment program that receives state or federal funds shall meet the following uniform, minimum standards:

(1) Clear statement of problem/issue to be addressed. The program/project shall identify the specific problem/issue(s) to be addressed, and describe a population or geographic area where the problem/issue exists. Estimates of the extent and nature of the problem in the population or geographic area to be served shall be based on relevant existing local, regional, state or national data (e.g. data from health, human services, education, law enforcement agencies, relevant studies, or program data).

(2) Focus on contributing factors. The program/project shall address risk factors known to contribute to the problem and/or protective factors known to prevent or reduce the problem; and shall focus its resources on changing these risk and protective factors. If specific risk and protective factors for the problem have not been identified in the literature, the program/project shall provide a clear rationale for the program focus, based on relevant prevention/intervention or child/youth development principles, theories or frameworks.

(3) Intended outcomes specified. The program/project shall specify one or more outcomes it intends to achieve as a result of the prevention and intervention program/services to be provided. These intended outcomes shall be related to changing the factors contributing to the problem or factors contributing to prevention or reduction of the problem. The intended outcomes shall specify the changes in knowledge, attitudes/beliefs, skills, behaviors, obstacles/enabling factors in the physical or social environment and/or changes in the physical and emotional health status, educational achievement or well-being of the individual, group or community being served.

(4) Evidence-based programs/services. The program/project shall provide prevention and intervention services that have been previously implemented in one or more communities with demonstrated success in achieving the intended results; or that otherwise demonstrate a reasonable potential for success based on research, sound prevention/intervention principles and/or relevant theory.

(5) Services and target population specified. The program/project shall specify the amount and type of services to be provided, and the proposed number of individuals, groups or the target population that will receive or benefit from the various program activities/services provided.

(6) Evaluation. (a) the program/project shall systematically document and be able to provide data regarding services provided/activities carried out, and the number of individuals, groups and/or target population(s) receiving the services or benefiting from program activities; and (b) the program/ project shall systematically document changes occurring as a result of the program services and activities provided; and shall provide evidence of progress in meeting one or more of its outcomes.

(7) Agency capacity. (a) staff carrying out the program/project shall be trained in the specific program, services or model that they will be implementing; or they shall have at least two years prior experience in the successful implementation of similar prevention or intervention programs, practices and/or policies; and (b) the agency shall maintain records of revenues and expenditures by funding source, and shall be able to produce verification of expenses upon request. The agency shall assure that an independent review of the fiscal records/practices is conducted periodically, but no less frequently than annually.

(8) Collaboration. The program/project shall regularly exchange information with other public, private and non-profit prevention, intervention and treatment programs at the state, regional or local level (e.g. faith-based organizations, health, education, human service, law enforcement agencies or other units of government) for the purposes of resource sharing, coordination of efforts, case management and to avoid duplication of services.

Part 6. Uniform Standards and Procedures for Reviewing State and Local Prevention, Intervention and Treatment Programs

6.1 Applicability.

This part 6 applies to all prevention and intervention programs for children and youth within the state that are operated or funded by a state agency using either state or federal funding.

6.2 The following standards and procedures shall be used in reviewing state and local prevention, intervention, and treatment programs that receive state or federal funds:

(1) Identification of programs to be reviewed. The Division shall use the criteria/definitions established by the State Board of Health in part 1.2.4 and 1.2.5 in determining which programs are subject to review. The Division shall notify the state agency funding and/or operating the program and advise them that they are subject to review. The review will focus on state level programs and practices. Entities receiving funds from the above-mentioned state level programs will be reviewed as part of the overall state level program review.

(2) Exceptions to review requirement. The division may determine that programs are exempt from review based on the following criteria:

(a) The program is currently required to carry out a review similar in nature to the one required by 25-20.5-108 C.R.S. If a program is currently required to carry out a review similar in nature to the review required by 25-20.5-108 C.R.S. and this review addresses the elements and criteria specified under this rule, the Division may accept that review in lieu of conducting its own review; and may forward a summary of that review to the parties designated in subsection (9) below;

(b) The program is the result of one-time funding, with no expectation of additional state or federal funding in the near future;

(c) The program is clinical in nature and is governed by clinical practice standards, professional certification and/or licensing standards; or

(d) The program is specifically excluded in 25-20.5-109 C.R.S.

(3) Timelines for review. The Division shall, at least every four years, review or cause to be reviewed each prevention, intervention, and treatment program operated within this state. All programs subject to review, shall undergo an initial review by June 30, 2004. In subsequent years, the Division in conjunction with the affected agencies and programs, shall establish a schedule for review. Programs must have completed at least one year of operation prior to review. Timing of the review shall, to the extent possible, be scheduled to coincide with existing program cycles.

(4) Review criteria. State programs shall be reviewed to determine the extent to which they:

(a) Meet their intended goals and outcomes;

(b) Comply with the applicable rules adopted by the State Board of Health;

(c) Comply with all requirements of the agency overseeing the operation of the prevention, intervention or treatment program;

(d) Meet the uniform minimum standards for state and federally-funded prevention and intervention programs for children and youth specified in part 5.2;

(e) Support and require their grantees/contractors to comply with the uniform, minimum standards for state and federally funded prevention and intervention programs in part 5.2;

(5) Documentation. Each program to be reviewed shall provide the Division, or its contractor, with the following documents, upon request:

(a) A copy of the grant or proposal submitted to the state or federal funding source that outlines the overall goals and intended outcomes of the program;

(b) A copy of the request for proposal, or similar document, used to solicit proposals for services to be provided by local, state or regional prevention and intervention service providers;

(c) A copy of the criteria used in making decisions regarding which programs and services to fund;

(d) A sample, as requested by the Division or contractor, of successful proposals and/or contracts with successful applicants;

(e) A sample of quarterly, biannual or annual reports submitted by grantees which includes information on the implementation of the project/services provided and an evaluation of the extent to which the program reached its intended goals and outcomes;

(f) A copy of an annual report, or similar document, provided to the original state or federal funding source which includes information on program implementation/ services provided and an evaluation of the extent to which the program reached its intended goals and outcomes;

(g) A statement that certifies that the program is complying with all requirements of the agency overseeing the operation of the program;

(h) Additional information may be requested or considered, as necessary. The information provided in the above documents will be reviewed and summarized by the Division or its contractor, and an executive summary of each program review will be drafted.

(6) Involvement of program staff. During the process of the program review, the Division or its contractor shall communicate with the program staff to gather information, review findings, and assure accuracy prior to development of the final program review summary. The Division will retain overall responsibility for the final review summary of programs.

(7) Unsatisfactory ratings. If the division determines that a state-operated prevention, intervention, and treatment program is not meeting or making adequate progress toward meeting the outcomes specified for the program, or is otherwise failing to comply with statutory or regulatory requirements, the Division shall notify the program of its findings in writing. Within 30 days of notification, the program will submit to the Division an improvement plan to correct deficiencies. At 90-day intervals from the time the plan is filed, the program will submit progress reports to the division on the manner in which they are implementing the improvement plan. If, after six months, the program is not making satisfactory progress in addressing program deficiencies, the division shall recommend to the Governor or to the general assembly, whichever is appropriate, that the prevention, intervention, and treatment program cease receiving state or federal funding.

If the Division determines that a community-based prevention, intervention and treatment program is not meeting or making adequate progress toward meeting the outcomes specified for the program, or is otherwise failing to comply with statutory or regulatory requirements, the Division, shall revoke the grant issued to the program, if it was issued by the Division, or recommend revocation to the state agency that issued the grant.

A community-based prevention, intervention and treatment program for which the grant is revoked may appeal as provided in the "State Administrative Procedure Act", Article 4 of Title 24, C.R.S.

(8) Contract for review. The Division may contract with one or more public or private entities to conduct the reviews of prevention and intervention programs and assist in preparing the annual executive report as required in this section.

(9) Report dissemination. The Division shall annually prepare or oversee the preparation of an executive summary of the prevention, intervention, and treatment program reviews conducted during the preceding year, and submit such summary to the Governor, to the General Assembly, to each state department that operates a prevention, intervention, and treatment program, and upon request, to each entity that receive state or federal funds for operation of a prevention, intervention, and treatment program during the fiscal year for which the summary is prepared. In addition, the Division shall provide copies of the executive summary to any person upon request.

6.3 Cost allocation formula.

The Division shall receive a percentage, as determined by rule, of the operating cost of each state prevention, intervention, and treatment program reviewed to offset the costs incurred by the Division in performing such reviews 25-20.5-108 (4), except as set forth in section 6.3(1)(a)(b)(c).

(1) Program review options. Because of the different funding mechanisms across state agencies, the varying level of work required to complete a program review, the need for flexibility, and the desire to make the best use of existing resources, the Division may offer options to programs to offset the cost of review, including:

(a) The program may demonstrate, using procedures and format determined by the Division, that it has completed a review which is similar in nature to the one required by 25-20.5-108 C.R.S. and, will supply documentation of the results of that review to the Division, in a format to be determined by the Division;

(b) The program may assign staff with expertise in program evaluation/review to prepare the necessary documentation, using procedures and format determined by the Division, to assess the extent to which the program meets the uniform, minimum standards and demonstrates progress in meeting its intended goals and outcomes, thereby substantially reducing outside costs;

(c) The program may directly contract with an evaluator, approved by the Division, who will complete the review, using criteria, procedures and format outlined by the Division; or

(d) The program may forward an amount to the Division, based on hourly rate and the total amount of time required to conduct the review as calculated by the Division.

(2) Cost allocation. The plan for review of the program will include an assessment of the cost, if any, to the Division of conducting the review and the manner by which those costs will be covered by the Division and/or by the program being reviewed. If state general fund or other funding is not available to the Division to carry out or contract for the program review, all costs associated with the review will be allocated to programs reviewed based on the amount of Division staff and/or contractor time required to complete the review.

Editor's Notes

History

PHILIP J. WEISER
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Office of the Attorney General

Tracking number: 2021-00530

Opinion of the Attorney General rendered in connection with the rules adopted by the

State Board of Health

on 10/21/2021

6 CCR 1016-2

PREVENTION, INTERVENTION, AND TREATMENT PROGRAMS FOR CHILDREN AND YOUTH

The above-referenced rules were submitted to this office on 10/25/2021 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.

October 29, 2021 14:42:36

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Public Safety

Agency

Division of Fire Prevention and Control

CCR number

8 CCR 1507-31

Rule title

8 CCR 1507-31 BUILDING, FIRE, AND LIFE SAFETY CODE ENFORCEMENT AND CERTIFICATION OF INSPECTORS FOR HEALTH FACILITIES LICENSED BY THE STATE OF COLORADO 1 - eff 12/15/2021

Effective date

12/15/2021

DEPARTMENT OF PUBLIC SAFETY

Division of Fire Prevention and Control

8 CCR 1507-31

BUILDING, FIRE, AND LIFE SAFETY CODE ENFORCEMENT AND CERTIFICATION OF INSPECTORS FOR HEALTH FACILITIES LICENSED BY THE STATE OF COLORADO

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to Section 24-33.5-1203.5, C.R.S., the Director of the Colorado Division of Fire Prevention and Control shall promulgate rules as necessary to carry out the duties of the Division of Fire Prevention and Control. Sections 24-33.5-1203.5, 24-33.5-1203, 24-33.5-1206, C.R.S. establish the authority of the Division to conduct or oversee the necessary plan reviews, issue building permits, and cause the necessary inspections to be completed related to the provisions of Title 24, Article 33.5, Part 12, C.R.S. This rule is proposed pursuant to this authority and is intended to be consistent with the requirements of the State Administrative Procedures Act, Section 24-4-101, et seq., C.R.S.

A modification to C.R.S. 24-33.5-1203(1)(p.5), effective on July 1, 2021, changes the expectations of the Division. Specifically, the Division is now required by the statute to conduct construction plan reviews and inspections of health facility buildings and structures, enforce the codes in accordance with sections 24-33.5-1212.5 and 24-33.5-1213, and issue certificates of compliance for "facilities certified or potentially eligible for certification by the federal centers for medicare and medicaid services." 24-33.5-1203(1)(p.5), C.R.S.

The purpose of this rule making is to establish the above-cited changes to C.R.S. 24-33.5-1203(1)(p.5) in rule. In addition, this rule making will add language under Article 13 to address the failure to pay a Certificate of Compliance Annual Fee. Lastly, the rule making allows for general clean-up of grammatical and formatting errors.

Mike Morgan, Division Director
Colorado Department of Public Safety
Division of Fire Prevention and Control

October 25, 2021
Date of Adoption

DEPARTMENT OF PUBLIC SAFETY

Division of Fire Prevention and Control

BUILDING, FIRE, AND LIFE SAFETY CODE ENFORCEMENT AND CERTIFICATION OF INSPECTORS FOR HEALTH FACILITIES LICENSED BY THE STATE OF COLORADO

8 CCR 1507-31

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

APPLICABILITY

These rules and regulations apply to all licensed health facilities pursuant to the provisions of §24-33.5-1201, C.R.S.

ARTICLE 1 – AUTHORITY TO ADOPT RULES AND REGULATIONS

1.1 The Director of the Division of Fire Prevention and Control is authorized by the provisions of section 24-33.5-1203.5, C.R.S., to promulgate rules in order to carry out the duties of the Division of Fire Prevention and Control.

1.2 Sections 24-33.5-1201, 24-33.5-1203, 24-33.5-1204.5 and 24-33.5-1206, C.R.S. establish the authority and duty of the Division of Fire Prevention and Control to conduct or oversee the necessary plan reviews, issue building permits, and cause the necessary inspections to be performed as required by the CRS Title 24 Article 33.5 Part 12. Where the Division is the Authority Having Jurisdiction it shall enforce and inspect to the adopted codes and standards for buildings and structures of health facilities licensed by the State of Colorado promulgated by the Division. Where the local building or fire department is the Authority Having Jurisdiction, that department will continue to enforce its adopted codes and standards.

1.3 Sections 24-33.5-1212.5 and 24-33.5-1213.5, C.R.S. establishes the authority and duty of the Division of Fire Prevention and Control to promulgate rules to certify persons to conduct Building Code plan reviews and inspections on behalf of the Division for health facilities licensed by the State of Colorado.

1.4 Section 24-33.5-1211 C.R.S. establishes the authority and duty of the Division of Fire Prevention and Control to certify persons to conduct Fire and Life Safety Code plan reviews and inspections on behalf of the Division for health facilities licensed by the State of Colorado.

1.5 The Director of the Division of Fire Prevention and Control is authorized to establish fees and charges necessary to defray the anticipated costs of the program in these rules by the provisions of 24-33.5-1212.5.

ARTICLE 2 – DEFINITIONS

2.1 The definitions provided in 24-33.5-1202, C.R.S., apply to these rules. The following additional definitions also apply:

“Authority Having Jurisdiction” means the Division, Building Department, Fire Chief, Fire Marshal, or other designated official of a county, municipality, special authority, or special district that has code enforcement responsibilities and employs a building inspector or certified fire inspector.

"Building Department" means the Building Department (or a contracted third party acting on their behalf) of the Division, authority, county, town, city, or city and county.

"Building Permit" means an official document issued by the Authority Having Jurisdiction which authorizes the erection, alteration, demolition and/or moving of buildings and structures.

"Business Entity" means any organization or enterprise and includes, but is not limited to, a sole proprietor, an association, corporation, business trust, joint venture, limited liability company, limited liability partnership, partnership or syndicate. For the purposes of these rules the Business Entity may elect to be represented by a designated representative through a written delegation of authority.

"Certificate of Compliance" means an internal official document issued by the Division to the Colorado Department of Public Health and Environment (CDPHE), stating that materials and products meet specified codes and standards, that work has been performed in compliance with approved construction documents, and that the provisions of applicable fire and life safety codes and standards continue to be appropriately maintained.

"Certificate of Occupancy" means an official document issued by the Authority Having Jurisdiction which authorizes a building or structure to be used or occupied for a specified purpose.

"Certified Health Facility" means a Health Facility which has been certified (or is seeking certification) by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, to participate in Federal funding of health care services under the provisions of the Federal Medicare and/or Medicaid programs.

"CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

"Core and Shell Permit" means an official document issued by the Authority Having Jurisdiction which is limited to authorizing the construction of foundation, columns, floor slabs, roof structure, exterior walls, and exterior glazing for the building to be weather tight.

"Construction" means work that is not considered as maintenance or service and that requires a permit as prescribed in the adopted codes and standards of the Division.

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

"Demolition Permit" means an official document issued by the Authority Having Jurisdiction which is limited to authorizing the demolition of all or part of a building or structure.

"Designated Representative" means a person designated by the Business Entity to act on their behalf through a written delegation of authority and is allowed to act in such manner as outlined in these rules.

"Director" means the Director of the Division of Fire Prevention and Control.

"Division" means the Division of Fire Prevention and Control in the Department of Public Safety.

"Executive Director" means the Executive Director of the Colorado Department of Public Safety.

"Fire Code Official" means the designated authority charged with the administration and enforcement of the Fire Code.

“Foundation” means work related to building footings, piers, foundation walls, slabs on grade, under slab and underground building services.

“Foundation Permit” means an official document issued by the Authority Having Jurisdiction which is limited to authorizing the construction of foundations.

“Health Facility” means a Health Facility as defined in C.R.S. 24-33.5-1202 (7.7).

“ICC” means the International Code Council.

“Individual” or **“Person”** means a person, including an owner, manager, officer, employee, or individual.

“Inspection, Testing, and Maintenance Program” means a program conducted by the building owner to satisfy the periodic inspection, testing, and maintenance requirements of fire protection and life safety systems as required by applicable codes and standards.

“Installation” means the initial placement of equipment or the extension, modification, or alteration of equipment after the initial placement.

“Life Safety Code Official” means the designated authority charged with the administration and enforcement of the Life Safety Code.

“Limited Scope Project” means a project with limited impact to fire and life safety features of a facility as defined by Division policy.

“Maintenance” means to sustain in a condition of repair that will allow performance as originally designed or intended. Maintenance does not include replacement of elements of a system which alter the performance criteria of the system as approved by the Authority Having Jurisdiction.

“Maintenance and Complaint Inspections” means periodic inspections or inspections conducted based on an allegation of nonconformance conducted by the local fire department or the Division to verify conformance with the adopted codes, rules, and standards. Such inspections are not to be considered to relieve the building owner of the responsibility to conduct an inspection, testing, and maintenance program for fire protection and life safety systems as required by the adopted codes, rules, and standards.

“NICET” means the National Institute for Certification in Engineering Technologies.

“NFPA” means the National Fire Protection Association.

“Qualified Inspector” means an inspector who has been certified by an approved national or state certifying body to conduct Building, Fire, and/or Life Safety Code inspections at the appropriate level for the task being performed.

“Qualified Fire Department” means a fire department that has Certified Fire Inspector at the appropriate level for the fire prevention-related task being performed and provides fire protection service for the Business Entity's buildings and structures.

“Service (Or Repair)” means to repair in order to return the system to operation as originally designed or intended.

“Temporary Certificate of Occupancy” means an official document issued by the Authority Having Jurisdiction which authorizes a building or structure to be temporarily used or occupied for a period not to exceed 90 days, unless an extension has been granted by the Authority Having Jurisdiction.

“Temporary Construction Trailer/Office” means a temporary modular building, owned and operated by the contractor that is less than 1,000 square feet and only placed for the duration of the project. Trailers meeting this definition (except where medical services are provided) are exempt from this rule. Trailers not meeting this definition will be considered as a modular building and permitted as such.

“Third-Party Inspector” means building inspectors who have been qualified by the Division to perform third-party inspection services in accordance with Article 10.1 of this rule.

“Total Project Valuation” means the construction cost of the project including materials and labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing, equipment, and permanent systems. Such valuation will be calculated using one of the following two methods:

a) For additions to, or new construction of, previously unlicensed Health Facility space, construction cost is calculated based on a per square foot cost using the International Code Council's Building Valuation Data Square Foot Construction Cost Table published February 2013.

b) For all other projects, construction cost is equal to the cost of the project as demonstrated by detailed estimates provided by the Business Entity.

ARTICLE 3 – CODES, DOCUMENTS, AND STANDARDS INCORPORATED BY REFERENCE

3.1 The technical requirements of these rules are supported primarily by codes developed by the International Code Council and the National Fire Protection Association. These two organizations are membership associations dedicated to building safety and fire prevention. These rules establish minimum requirements where the Division is the Authority Having Jurisdiction for building systems using prescriptive and performance related provisions, which are widely used to construct residential and commercial buildings. The appropriate portions of the adopted codes will be applied as prescribed by the adopted codes themselves. Where there are differing provisions for new and existing construction, all work taking place after April 1, 2019 must meet the requirements for new construction and as amended per provisions of IEBC and NFPA 101.

3.2 The following codes and their referenced standards are adopted and promulgated as minimum standards for the construction and maintenance of all property, buildings, and structures containing a Health Facility in the State of Colorado where the Division is the Authority Having Jurisdiction:

3.2.1 Adopted codes pertinent to this rule shall be as prescribed in 8 CCR 1507-101 (BUILDING AND FIRE CODE ADOPTION AND CERTIFICATION OF INSPECTORS FOR FIRE & LIFE SAFETY PROGRAMS ADMINISTERED BY THE STATE OF COLORADO).

3.2.1.1 For the purposes of this rule the Division shall enforce the Building Codes as defined in 8 CCR 1507-101 § 3.2.1.

3.2.1.2 For the purposes of this rule the Division shall enforce the Fire Codes as defined in 8 CCR 1507-101 § 3.2.2.

3.2.1.3 For the purposes of this rule the Division shall enforce the Life Safety and Health Facility Construction Codes and Guidelines as defined in 8 CCR 1507-101 § 3.2.3.

3.3 In any facility where the evacuation capability of the facility or resident population is required to be rated, the "Procedure for Determining Evacuation Capability" published by NFPA is to be used by the facility whether the facility is evaluated utilizing the NFPA 101A, Guide on Alternative Approaches to Life Safety (2013), or NFPA Standard 101, Life Safety Code (2012). The Level of Evacuation Difficulty for each facility will be determined by the scores developed in the Worksheet for Rating Residents completed by responsible staff for each resident and the level of staffing maintained at the facility. It is the responsibility of the owner or administrator to ensure that the abilities of the residents are accurately rated in accordance with the published instructions. Each new resident shall be rated utilizing the Worksheet for Rating Residents within two (2) weeks of their admission to the facility. All resident rating scores shall be reviewed at least annually, or when there are significant changes in a resident's physical or cognitive abilities. Failure to rate the evacuation capability in accordance with these provisions upon two inspections will result in a permanent "impractical" rating for the facility.

3.4 Certificates of Occupancy and Certificates of Compliance issued after the adoption of codes by the Division for space not currently licensed by CDPHE will be based on compliance with the requirements for new construction within the applicable codes.

ARTICLE 4 – AUTHORITY OF LOCAL BUILDING DEPARTMENTS

4.1 Where the Health Facility is located in a jurisdiction with a local Building Department, the authority to conduct the necessary plan reviews, issue building permits, conduct inspections, issue Certificates of Occupancy, issue Temporary Certificates of Occupancy, and take enforcement action to ensure that a building or structure has been constructed in conformity with the locally adopted codes remains the responsibility of the local Building Department. Under these circumstances, the Division will accept a completed Building Permit and associated Certificate of Occupancy from the local Building Department as demonstration of compliance with the locally adopted building codes.

4.2 Where the Health Facility is located in a jurisdiction with no local Building Department, the authority to conduct the necessary plan reviews, issue building permits, conduct inspections, issue Certificates of Occupancy, issue Temporary Certificates of Occupancy, and take enforcement action to ensure that a building or structure has been constructed in conformity with these rules is the responsibility of the Division. Under these circumstances, the Division will issue the applicable Building Permits and associated Certificates of Occupancy as demonstration of compliance with the Division's adopted building codes. The determination of when a building permit is required shall be based upon the International Building Code Section 105 requirements (except 105.1.1 and 105.1.2). Substantial changes to the scope of the project (including addition of square footage to the project scope) will require a submittal of a new application for a permit.

ARTICLE 5 – DEFINITION OF FIRE AND LIFE SAFETY CODE OFFICIALS

5.1 The Division is the Fire and Life Safety Code Official for Certified Health Facilities and facilities that could potentially become a Certified Health Facility.

5.2 For non-certified Health Facilities that cannot potentially become a Certified Health Facility and are located in a jurisdiction where the local fire department has Certified Fire Inspectors at the appropriate level for the task, the local fire department is responsible for conducting the necessary construction plan reviews and inspections. Under these circumstances, the local fire department is considered the Fire and Life Safety Code Official and will enforce the locally adopted Fire and Life Safety Codes.

5.3 If the local fire department declines to perform the plan review or any subsequent inspection, or if a Certified Fire Inspector is not available, the Division will be considered the Fire and Life Safety Code Official and the Division will perform the construction plan reviews and inspections required by the Division's adopted Fire and Life Safety Codes and will enforce the Division's adopted Fire and Life Safety Codes. The determination of when a fire and life safety permit is required will be based upon the International Building Code Section 105 requirements (except 105.1.1 and 105.1.2) and the International Fire Code Section 105.7 requirements. Substantial changes to the scope of the project (including addition of square footage to the project scope) will require a submittal of a new application for permit.

5.4 For Certified Health Facilities or for facilities that could potentially become Certified Health Facilities that are located in a jurisdiction where the local fire department has Certified Fire Inspectors at the appropriate level for the task, the local fire department is responsible for conducting the necessary fire code construction plan reviews and inspections. Under these circumstances, the local fire department will be considered the Fire Code Official. In this instance, the Division will be considered the Life Safety Code Official and the Division will perform the construction plan reviews and inspections required by the Division's adopted Life Safety Codes and will enforce the Division's adopted Life Safety Codes The determination of when a life safety permit is required shall be based upon the International Building Code Section 105 requirements (except 105.1.1 and 105.1.2) and the International Fire Code Section 105.7 requirements.
Substantial changes to the scope of the project (including addition of square footage to the project scope) will require a submittal of a new application for a permit.

ARTICLE 6 – PERMIT APPLICATION SUBMITTAL TO THE DIVISION

6.1 Notification of Submittal to a Local Building Department

6.1.1 For projects that require a permit that will be reviewed and inspected by a local Building Department, the Business Entity shall notify the Division and the State licensing authority prior to beginning construction. Notification must include:

A) Name of project;

B) Location of project;

C) Scope of work of project;

D) Projected total cost of project;

E) Projected square footage of project;

E) Planned construction start and end dates;

F) Identification of Fire Code Official (Name of the Qualified Fire Department or the Division);

G) Identification of Building Code Official (Name of the Building Code Official or the Division);

H) A description of the proposed health services to be provided and the type of licensure being sought through the state licensing authority;

I) A copy of the Life Safety Code plan sheets submitted in the format as prescribed by the Division.

6.2 Permit Application Submittal to the Division

6.2.1 For all construction (including adding previously unlicensed space to a Health Facility license) or operational permits not covered under a Limited Scope Project permit as defined by this Article, the Business Entity shall submit a complete plan review application package to the Division for Life Safety Code compliance review. If there is not a local building department, the Business Entity shall also submit a complete plan review application package to the Division for Building Code compliance review.

6.2.2 The plan review application package must be submitted to the Division in the format defined by Division policy.

6.2.3 The building permit application package shall be concurrently submitted to the Division and to the local fire department. Either the Qualified Fire Department or the Division will review the submittal for compliance with the applicable codes. Permit issuance is contingent upon the review and approval of the submittal by the applicable Life Safety and/or Fire Code Officials. The Business Entity is required to contact the local fire department to determine the required submittal items not listed in this rule.

6.3 Plan Review and Permitting by the Division

6.3.1 The Division will notify the Business Entity if the permit application is incomplete.

6.3.2 The Building Code plan review will be completed by a qualified building plans examiner within the Division or by a qualified third-party reviewer contracted by the Division.

6.3.3 The Fire Code plan reviews will be completed by an individual qualified as a Fire Inspector III – Plans Examiner within the Division, qualified third-party reviewer contracted by the Division, or by the Qualified Fire Department.

6.3.4 The Life Safety Code plan reviews will be completed by an individual qualified as a Fire Inspector III – Plans Examiner and CMS Qualified Life Safety Code Inspector within the Division.

6.3.5 Upon completion of the code review, the Division will provide the Business Entity with a comprehensive list of corrections to be addressed prior to the issuance of a permit. This list of corrections should not be considered all-inclusive and may not be considered as approval of any condition in violation of applicable code. Once all corrections have been satisfactorily addressed, the Division will issue the permit.

6.4 Phased Construction

6.4.1 Upon request by the Business Entity, the Division may issue individual permits for demolition, construction of foundations, and construction of core and shell, or for individual phases of an overall project provided that construction documents for that portion of the building or structure being permitted have been submitted per Article 6.3. The holder of such permit for demolition or the construction of foundations or vertical construction may then proceed at the holder's own risk with building operation and without assurance that a permit for the entire structure will be granted. Issuance of this permit should not be considered all-inclusive and may not be considered as approval of any condition in violation of applicable codes.

6.5 Deferred Design/Build Submittals/Shop Drawings

6.5.1 Deferred design/build (shop drawing) submittals for fire protection and life safety systems are permitted; however, construction documents must provide sufficient information to show compliance with Fire and Life Safety Code requirements and coordination between fire systems and other building systems (i.e., HVAC systems, security systems).

6.5.2 Shop (Installation) drawings for fire protection and life safety systems shall be submitted to the Fire and Life Safety Code Official(s) for review and approval prior to beginning installation of the system.

A) Fire sprinkler and fire alarm shop drawings shall be submitted to the Fire and Life Safety Code Officials in accordance with the requirements of the adopted codes in the format as prescribed by the Division and the local fire department.

B) Shop (installation) drawings for other systems regulated by the Fire and Life Safety Codes shall be submitted to the Division in accordance the appropriate referenced standard for the system.

6.5.3 Minimum Qualifications for Fire Protection and Life Safety System Design and Installation

A) Fire Suppression Systems

Any installation, modification, alteration, or repair of a fire suppression system shall be in accordance with 8 CCR 1507-11 - Colorado Fire Suppression program.

B) Fire Alarm Systems

(1) The design of any new system or alteration of an existing fire alarm system using the prescriptive requirements of NFPA 72 shall be performed by a person who is currently a professional engineer or qualified by NICET at a level III or level IV in fire protection engineering technologies - fire alarm systems, or another nationally recognized organization approved by the Division.

(2) The design of any new system or alteration of an existing fire alarm system using performance-based design methods as described by NFPA 72 or alternative materials and methods as described by the adopted
Fire Code shall be performed by a person who is currently a professional engineer specializing in fire protection.

(3) The installation of a fire alarm system shall be performed by or supervised by a person who is currently qualified at a minimum of NICET level II in fire protection engineering technologies – fire alarm systems, or another nationally recognized organization approved by the Division.

C) Other Fire and Life Safety Protection Systems Regulated by the Building, Fire, or Life Safety Codes

The design and installation shall be performed by a company or individual with manufacturer- or factory-approved training for the specific system, or as otherwise required by the applicable code section or referenced standard.

6.6 Limited Scope Project Permit

6.6.1 In lieu of an individual Building, Fire, or Life Safety Code permit for each limited scope project, the Division may issue a Limited Scope Project Permit upon approved application for or renewal of a Certificate of Compliance. Permits for Limited Scope Projects expire concurrent with the Certificate of Compliance for the Health Facility. The Business Entity shall notify the Local Fire Department prior to the commencement of work conducted under a Limited Scope Project Permit.

6.6.2 Limited Scope Project Permits are restricted to those projects identified by the Division.

6.6.3 The Business Entity to whom a Limited Scope Project Permit is issued shall keep a detailed record, including stamped engineered drawings (if applicable), of all modifications made under such Permit.

6.6.4 All work completed under an Limited Scope Project Permit shall be inspected by a local building department inspector, a Third-Party Inspector, or a qualified tradesperson (as specified by local or state licensing requirements or the installation standards adopted by the Division [if applicable], the manufacturer's installation recommendations, or minimally a person with 3 years or more of experience in the field of construction) within 10 days of completion of a project, and such inspections shall be recorded on an inspection log. The Division may perform interim inspections at any time and must have access to all inspection logs at all times. Copies of such records shall be submitted to the Division within 30 days of the expiration date of the Limited Scope Project Permit.

6.6.5 If the inspection logs associated with the Limited Scope Project Permit demonstrate compliance with the Limited Scope Project Permit requirements, the Division may issue a Certificate of Compliance for projects completed under that permit.

6.6.6 If the inspection logs associated with the Limited Scope Project Permit demonstrate noncompliance with the Limited Scope Project Permit requirements, the Division will issue a correction notice and may revoke and withhold issuing another Limited Scope Project Permit or Certificate of Compliance to the Business Entity until all corrections have been satisfied and may, based on the extent of noncompliance and at the Division’s discretion, elect to not issue a limited scope project permit for the next renewal of the Certificate of Compliance.

ARTICLE 7 – CONSTRUCTION INSPECTIONS

7.1 Building Code Inspections Conducted by the Division

7.1.1 Construction or work for which a permit is required is subject to inspection by the Division or a Third-Party Inspector hired by the Business Entity. Such construction or work shall remain accessible and exposed for inspection purposes until approved. Neither the Division nor a Third-Party Inspector contracted by the Business Entity is liable for expenses incurred in the removal or replacement of any material required to allow inspection.

7.1.2 The Division may contract with Third-Party Inspectors who are qualified in accordance with Article 10 of these rules to perform inspections. A Health Facility may hire and compensate Third-Party Inspectors under contract with the Division or hire and compensate other Third-Party Inspectors who are qualified in accordance with Article 10 of these rules to perform inspections.

A) Prior to commencement of construction on projects requiring third-party inspections, the Business Entity shall notify the Division of the designated Third-Party Inspector for the permitted project. The notification shall be made in writing using a form provided by the Division. The Division may request a preconstruction meeting with the Business Entity, the contractor hired to perform the work, and the qualified Third-Party Inspector.

B) Third-Party Inspectors shall include their printed name and state certification number in the appropriate location on the inspection report or card.

C) The Division will require a sufficient number of third-party inspection reports to be submitted by the inspector based upon the scope and cost of the project to ensure quality inspections are performed. Concurrent with the permit approval, the Division will issue an Inspection Card specifying the applicable required inspections as set forth in Chapter 1 of the Building Code or as determined by the Division. The inspection card shall be on site throughout the duration of the project.

D) If the Division finds that inspections are not completed satisfactorily, or that all violations are not corrected, the Division will take enforcement action against the appropriate Business Entity pursuant to Article 11. In such case the Division may also require that all inspections for the next project undertaken by the Business Entity be conducted by the Division's inspectors.

7.1.3 For permits issued by the Division, the final inspection will be conducted only by the Division after all work required by the building permit is completed. Mid-construction inspections may be performed to observe progress and verify compliance with third-party inspection requirements as deemed necessary by the Division.

7.2 Fire and Life Safety Code Inspections

7.2.1 Project sites shall be inspected by the Fire and Life Safety Code Officials to verify compliance with the Fire and Life Safety Codes and approved construction documents. Construction inspections shall be conducted by a person certified as Fire Inspector II or Fire Inspector III – Plans Examiner. Third-party inspection provisions do not apply to the required Fire and Life Safety Code inspections. Either the Division or the Qualified Fire Department shall perform fire inspections.

7.2.2 Results of all inspections shall be documented on the job site inspection card and in the official records of the inspecting entity, and shall include type of inspection, date of inspection, identification of the responsible individual doing the inspection, and comments regarding approval or disapproval of the inspection. Inspection records shall be retained by the inspecting entity for three years after the Certificate of Compliance or Certificate of Occupancy is issued.

7.2.3 Certified Fire Inspectors shall include their printed name and state fire inspector certification number in the appropriate locations on the inspection report or card.

7.3 Inspection Request Notification to the Division.

7.3.1 The Division shall be provided with notification in writing no later than noon of the Thursday in the week preceding the requested inspection. The Division will make reasonable efforts to provide the inspection on the requested day or time, provided an inspector is available. If the inspection schedule is full, an alternate day and time will be proposed for the inspection to be completed within the next 30 days, unless otherwise negotiated.

7.3.2 It is the duty of the permit holder to provide access to and means for inspections of such work that are required by the inspector.

7.3.3 Work will not be done beyond the point indicated in each successive inspection without first obtaining the approval from the appropriate inspection entity. The inspector, upon notification, will perform the requested inspections. In the case that the Division cannot complete the inspection within the timeframe requested, the Business Entity may elect to hire a Third-Party Inspector to conduct that inspection at their own expense. Upon completion of the inspection, the inspector will either indicate the portion of the construction that is satisfactory as completed, or notify the permit holder or their Designated Representative of any deficiencies. Any portions of the construction that do not comply with the codes adopted in these rules shall be corrected and such portion shall not be covered or concealed until authorized by the appropriate inspection entity. The re-inspection shall be requested in accordance with Article 7.3.1.

7.4 Stop Work Orders Issued by the Division.

7.4.1 If the Division finds any work regulated by these rules being performed in a manner either contrary to the provisions of these rules or dangerous or unsafe, the Division is authorized to issue a stop work order.

7.4.2 The stop work order will be in writing and will be given to the Business Entity, the Designated Representative, or the person doing the work. Upon issuance of a stop work order, the cited work must immediately cease. The stop work order will state the reason for the order and the conditions under which the cited work will be permitted to resume.

7.4.3 Any person who continues any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, will be subject to penalties as prescribed by these rules.

ARTICLE 8 – CERTIFICATE OF OCCUPANCY AND CERTIFICATE OF COMPLIANCE

8.1 The Business Entity shall not occupy or use a Health Facility or portion thereof for the provision of services until a completed and closed Permit, Certificate of Compliance, Certificate of Occupancy or a Temporary Certificate of Occupancy has been issued by Division and/or the local building department.

8.2 The Division or the local building department may issue a Temporary Certificate of Occupancy if a Health Facility requires immediate occupancy and if the Business Entity has passed the appropriate inspections, including fire inspections, that indicate there are no life safety issues. If no renewal of the Temporary Certificate of Occupancy is issued or a permanent Certificate of Occupancy is not issued, the building shall be vacated upon expiration of the Temporary Certificate of Occupancy.

8.3 A Health Facility shall not provide health services without a valid Certificate of Compliance that has been issued by the Division for that portion of the Health Facility. If no renewal of the Certificate of Compliance is issued, the building shall be vacated upon expiration of the Certificate of Compliance.

8.4 Certificates of Occupancy and Certificates of Compliance will be issued based on the codes in effect during the most recent inspection of the facility. No Certificate of Compliance will be issued until compliance with the applicable codes and standards has been demonstrated through record review of local Authority Having Jurisdiction documents of inspection and certification, Division inspection and certification, or other appropriate documentation, showing the building to be in conformance with applicable codes and standards applicable at the time of issuance. The Business Entity is required to submit these documents to the local Authority Having Jurisdiction.

8.5 For the initial issuance of the Certificates of Compliance after July 1, 2013 the Certificate will be based on the codes as adopted and enforced by CDPHE during the last inspection or in effect upon the original submittal for plan review of the facility within the five years prior to July 1, 2013. For facilities that have not been inspected within the last five years, the Certificate will be issued based on the codes as adopted and enforced by CDPHE as of June 30, 2013.

ARTICLE 9 – MAINTENANCE AND COMPLAINT INSPECTIONS AND INSPECTION, TESTING AND MAINTENANCE PROGRAMS.

9.1 Maintenance and Complaint Inspections

9.1.1 The Division may perform inspections of the buildings and structures when deemed necessary to ensure that they are maintained in accordance with the appropriate
chapters of the adopted Fire and Life Safety Codes. If the Health Facility is not certified, is not seeking certification, or cannot potentially seek certification to participate in Medicare or Medicaid funding, the Local Qualified Fire Department providing fire protection service will conduct these maintenance inspections.

A) If the Local Qualified Fire Department is unable or unwilling to perform maintenance or complaint inspections, the Division has the authority and duty to perform them.

B) If the Local Qualified Fire Department does not have an inspector qualified as a Fire Inspector I or above, the Division will perform regular maintenance inspections for the Business Entity to ensure compliance with this rule and the applicable statutes. In this instance the Division inspector will attempt to contact the local Fire Authority to ascertain any concerns the local fire authority might have related to the Health Facility.

9.1.2 Where a local Qualified Fire Department is performing maintenance and complaint inspections, the Business Entity is required to notify the Division that such inspections are being performed. The Business Entity shall provide a copy of the local Qualified Fire Department's inspection report and documentation that all identified deficiencies have been corrected within 30 days of the inspection and subsequent re-inspections until compliance is demonstrated. If such documentation is not provided, the Division will assume that the inspections have not been performed and will have the duty to perform them.

9.1.3 Nothing in this Article prohibits the local fire department providing fire protection services from conducting routine assessments of buildings and structures or from correcting violations that pose an immediate threat to life safety. Additionally, nothing in this Article prohibits the local fire department from seeking enforcement under defined local procedures and rules.

9.1.4 A local Qualified Fire Department providing fire protection service for buildings and structures of a Health Facility that chooses to perform Fire and Life Safety Code inspections may refer notices of deficiencies to the Division for evaluation and enforcement. Notices of deficiencies and requests for evaluation and enforcement shall be submitted in writing to the Division as described in Article 11 of this Rule.

9.2 Inspection, Testing and Maintenance Programs.

9.2.1 The Business Entity shall ensure that building systems are inspected, tested, and maintained as required by the adopted codes and referenced standards.

9.2.2 Personnel employed by a Business Entity performing inspection, testing, and maintenance programs are not required to be Certified Fire Inspectors, but must be qualified to perform the actions as required by the standards or listings of the devices or systems.

Exception: Work conducted on system components that would require permits, licensing, or certifications under any adopted codes, laws, or rules shall be conducted in accordance with those requirements.

9.2.3 Inspection, Testing, and Maintenance Records shall be retained for at least three years. Records must indicate the procedure or inspection performed, the organization that performed the procedure or inspection, the results, and the date. The Business Entity shall provide these records for review by the local Qualified Fire Department or to the Division upon request.

9.2.4 The Business Entity shall report or cause to be reported in the manner and method required by the Division all fires that occur within any Health Facility subject to regulation by the Division in the State of Colorado. This requirement shall be met anytime a fire occurs that causes any one of the following conditions:

A) Activates one of the fire and life safety systems installed in the building or structure (e.g. – fire alarm system, fire suppression system, etc.).

B) Causes a response from the Fire Department

C) Causes the evacuation of any occupants located in the building or structure.

D) Results in the deployment and use of a fire extinguisher.

ARTICLE 10 – BUILDING CODE AND FIRE CODE INSPECTOR QUALIFICATION

10.1 Building Code and Fire Code Inspectors shall be certified in accordance with the provisions of 8 CCR 1507-101 (BUILDING AND FIRE CODE ADOPTION AND CERTIFICATION OF INSPECTORS FOR FIRE & LIFE SAFETY PROGRAMS ADMINISTERED BY THE STATE OF COLORADO).

10.2 Duties of Third-Party Inspectors

10.2.1 Third-Party Inspectors contracted by the Business Entity shall conduct the required inspections and require corrections or modifications as necessary to ensure that a building or structure is constructed in conformity with the Building Code adopted by the Division.

10.2.2 Third-Party Inspectors contracted by the Business Entity shall enforce only the codes adopted by the Division.

10.2.3 The Business Entity shall only use inspectors that are qualified by the Division to work on Health Facility projects.

10.2.4 Third-Party Inspectors contracted by the Business Entity shall send copies of their inspection reports to the Division.

10.2.5 If all inspections are not completed and a building requires immediate occupancy, and if the Business Entity has passed the appropriate inspections that indicate there are no life safety issues, the qualified Third-Party Inspectors contracted by the Business Entity shall notify the Division of the same. Upon this notice, the Division may issue a Temporary Certificate of Occupancy to allow the Business Entity to occupy the buildings and structures.

10.2.6 Applicants for Third-Party Inspection Certification must complete the process as defined by the Division.

10.3 Duties of Certified Fire Inspectors

10.3.1 Where there is a local Qualified Fire Department, local Qualified Fire Inspectors shall conduct the required plan reviews and inspections and require corrections or modifications as necessary to ensure that a building or structure is constructed in conformity with the locally adopted Fire Codes.

10.3.2 Where there is not a Qualified Fire Department, Division Fire Inspectors shall conduct the required plan reviews and inspections and require corrections or modifications as necessary to ensure that a building or structure is constructed in conformity with the Division's adopted Fire and Life Safety Codes.

10.3.3 If all inspections are not completed and a building requires immediate occupancy, and if the Business Entity has passed the appropriate inspections that indicate there are no life safety issues, the Fire Inspector may recommend to the Division or the local Building Department that a Temporary Certificate of Occupancy be issued to allow the Business Entity to occupy the buildings and structures.

10.3.4 The Business Entity shall maintain records of all plan reviews and inspections for a period of no less than five years. Said records shall be made available for review by the Division upon request.

ARTICLE 11 – ENFORCEMENT

11.1 The Director and Executive Director will enforce the requirements of the codes adopted in Article 3 when the Division is considered the Authority Having Jurisdiction, in accordance with the provisions of section 24-33.5-1213, C.R.S.

11.1.1 The Director may issue a notice of violation to a person who is believed to have violated the codes as determined by an inspection pursuant to section 22-32-124(2), 23-71-122(1)(v), 24-33.5-1212.5, or 24-33.5-1213.3, C.R.S. The notice shall be delivered to the alleged violator by certified mail, return receipt requested, or by any means that verifies receipt as reliably as certified mail, return receipt requested.

11.1.2 The notice of violation shall allege the facts that constitute a violation

11.1.3 The notice of violation may require the alleged violator to correct the alleged violation.

11.1.4 Within ten working days after delivery of the notice of violation, the alleged violator may request in writing an informal conference with the Director concerning the notice of violation. If the alleged violator fails to request the conference within ten days, the notice of violation is final and not subject to further review by the Director, and any requirement to correct the alleged violation pursuant to 11.1.4 becomes a binding enforcement order.

11.1.5 Upon receipt of a request for an informal conference, the Director shall set a reasonable time and place for the conference and shall notify the alleged violator of the time and place of the conference. At the conference, the alleged violator may present evidence and arguments concerning the allegations in the notice of violation.

11.1.6 Within twenty working days after the informal conference, the Director shall uphold, modify, or strike the allegations within the notice of violation and may issue an enforcement order. The decision and, if applicable, enforcement order shall be delivered to the alleged violator by certified mail, return receipt requested, or by any means that verifies receipt as reliably as certified mail, return receipt requested.

11.2 A person who is the subject of, and is adversely affected by, a notice of violation or enforcement order issued pursuant to Article 11 may appeal such action to the Executive Director. The Executive Director shall hold a hearing to review such notice or order and take final action in accordance with Article 11 and may either conduct the hearing personally or appoint an administrative law judge from the department of personnel.

11.2.1 Final agency action shall be subject to judicial review pursuant to C.R.S. Article 4 of Title 24.

11.2.2 An alleged violator who is required to correct an action pursuant to Article 11 shall be afforded the procedures set forth in section 24-4-104(3), C.R.S., to the extent applicable.

11.3 An enforcement order issued pursuant to this Article may impose a civil penalty, depending on the severity of the alleged violation, not to exceed five hundred dollars per violation for each day of violation; except that the Director may impose a civil penalty not to exceed one thousand dollars per violation for each day of violation that results in, or may reasonably be expected to result in, serious bodily injury.

11.4 The Director may file suit in district court in the judicial district in which a violation is alleged to have occurred to judicially enforce an enforcement order issued pursuant to this section.

11.5 In addition to the remedies provided in this Article, the Director is authorized to apply to the district court, in the judicial district where the violation has occurred, for a temporary or permanent injunction to restrain any person from violation any provision of section 22-32-124(2) or 23-71- 122(1)(v), C.R.S., or section 24-33.5-1212.3 or 24-33.5-1213.5, C.R.S. regardless of whether there is an adequate remedy at law.

11.6 It is not the intent of this Article to remove, limit, or modify enforcement authority of the fire department providing fire protection service for buildings or structures of a Business Entity.

ARTICLE 12 – CODE INTERPRETATION APPEALS

12.1 A Business Entity who is the subject of, and is adversely affected by, a code decision or interpretation made by a Division inspector or Third-Party Inspector that conducts a plan review or inspection pursuant to these rules, may appeal such decision or interpretation to the Board of Appeals formed by Section 24-33.5-1212.5, C.R.S.

12.1.1 The affected Business Entity will first contest the preliminary code interpretation to the Division. After consideration, the Division will issue its final code determination on the matter.

12.1.2 If the Business Entity still disagrees, it may appeal to the Board of Appeals. The appeal shall be filed within 30 days after the date of the final written decision by the Division. Upon receipt of an appeal, the Division will notify the Chair of the Board of Appeals and schedule a hearing no more than 15 days after the date the appeal was filed.

12.1.3 An application for appeal must be based on a claim that the true intent of this code or the standards legally adopted therein have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction is proposed. The Board of Appeals may not waive any requirements of the codes or standards; however, the Board of Appeals may recommend alternative materials or methods as provided in
the codes or standards. The final written decision of the Board of Appeals is final agency action for purposes of section 24-4-106, C.R.S.

ARTICLE 13 – FEES AND CHARGES

13.1 The Division will charge the following fees for Third-Party Inspector Certifications:

Third Party Inspector Certification Fees	
Certification of Third-Party Inspectors Through Equivalent Qualification Review	$75.00
Renewal of Third-Party Inspector Certification	$50.00

13.2 Plan Review, Construction Permit, and Inspection Fees

13.2.1 The Division will charge fees to cover the actual, reasonable, and necessary expenses of the Division.

13.2.2 The plan review, construction permit, and inspection fees are calculated based on the Total Project Valuation.

A) The building inspection component of this fee in 13.2.4(A) includes an allocation of site visits to complete the necessary inspections in accordance with the table below. In the event that additional inspections by the Division are necessary or requested, additional fees may be assessed as outlined in 13.2.4.

B) The Fire and Life Safety inspection component of this fee in 13.2.4(C) includes an allocation of site visits to complete the necessary inspections in accordance with the table below. In the event that additional inspections by the Division are necessary or requested, additional fees may be assessed as outlined in 13.2.4.

New Construction	
Under 50,000 sq.ft.	10 site visits
50,001-100,000 sq.ft	15 site visits
100,001-200,000 sq. ft.	25 site visits
Over 200,000 sq. ft.	5 site visits/each additional 100,000 sq. ft.
Remodels/Renovations/Single System Submittal	
Under 50,000 sq. ft.	5 site visits
50,001-100,000 sq. ft.	10 site visits
Over 100,000 sq. ft	5 site visits/each additional 100,000 sq. ft.

C) Division inspection fees do not include costs associated with inspections conducted by local Authorities Having Jurisdiction or Third-Party Inspectors.

D) If the submitted Total Project Valuation appears to be below market value for the project, the Division reserves the right to request documentation from the Business Entity to verify the Total Project Valuation. The Business Entity has the right to mark documents submitted to verify the Total Project Valuation as proprietary information.

13.2.3 The Division will review the fund balance periodically and may reduce or increase the amount of the fee, if necessary, pursuant to section 24-75-402 (3) and 24-75-402 (4), C.R.S.

13.2.4 A fee calculator posted on the Division website enables determination of total fees (plan review and construction permit fees) prior to submittal of a project.

A) Fees for Building Code reviews performed by the Division will be subject to a base fee of $600.00 plus a fee equal to .0009 times the Total Project Valuation.

B) Fees for Fire and/or Life Safety Code reviews by the Division will be subject to a base fee of $600.00 plus a fee equal to .0009 times the Total Project Valuation.

C) When both Building and Fire and Life Safety Code reviews are performed by the Division the Fees will equal the sum of both the Building review fees in Article 13.2.4(A) and the Fire and Life Safety review fees in Article 13.2.4(B).

13.2.5 Half of the fees must be submitted prior to commencement of plan review and the remaining half must be submitted prior to permit issuance. Inspections will not be performed until the required fee has been paid. Additional inspection fees must be submitted prior to issuance of any associated Certificate of Compliance, Certificate of Occupancy, or completion of the permit.

13.2.6 The Division may assess a $200 inspection for each additional inspection in excess of the number allocated by the table in 13.2.2. Additional Inspections exceeding 4 hours in length, including travel time, will be charged $50 for each additional hour or portion thereof.

13.2.7 The Division may assess an additional off-hours inspection fee of $200 for inspections requested outside of normal business hours.

A) Normal inspection hours are Monday through Friday between 8:00 am and 5:00 pm.

B) Off-hours inspections are scheduled on an “as-available” basis. The Division is not obligated to provide inspections outside of normal operating hours if an inspector is not available.

13.2.8 The Division may assess a fee of $100 for the replacement of a lost inspection record card.

13.3 Fire and Life Safety Certificate of Compliance Inspection Fees

The following fees will be charged for Fire and Life Safety Certificate of Compliance inspections performed by the Division:	
Certificate of Compliance Annual Fee	$ 500.00
On-site re-visit inspection (per 4 hour block including travel)	$ 400.00
Documentation review	$ 200.00

13.3.1 Fees are charged per street address.

13.3.2 Failure to pay for Fire and Life Safety Code inspections performed will result in a notice of violation and enforcement in accordance with Article 11 of this rule. In addition, the Division shall not issue the Certificate of Occupancy and/or Certificate of Compliance.

13.3.3 Failure to pay Certificate of Compliance Annual Fee may result in suspension of the Certificate of Compliance, subjecting the facility to the provisions outlined in 8.3.

13.4 Fees may be waived or modified when appropriate at the discretion of the Director or his designee. Request for waiver or modification shall be in writing.

ARTICLE 14 – SEVERABILITY

14.1 If any provision or application of these rules is held invalid, all other provisions and applications of these rules will remain in effect.

ARTICLE 15 – INQUIRIES

15.1 All questions or requests for interpretation of these rules should be submitted in writing to the Fire & Life Safety Section Chief, Colorado Division of Fire Prevention and Control, 700 Kipling St, Suite 4100, Denver, CO 80215. Telephone number: (303) 239-4100

PHILIP J. WEISER
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NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
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DEPARTMENT OF LAW

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Office of the Attorney General

Tracking number: 2021-00584

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Fire Prevention and Control

on 10/25/2021

8 CCR 1507-31

BUILDING, FIRE, AND LIFE SAFETY CODE ENFORCEMENT AND CERTIFICATION OF INSPECTORS FOR HEALTH FACILITIES LICENSED BY THE STATE OF COLORADO

The above-referenced rules were submitted to this office on 10/26/2021 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.

November 12, 2021 16:30:09

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Board of Nursing

CCR number

3 CCR 716-1

Rule title

3 CCR 716-1 NURSING RULES AND REGULATIONS 1 - eff 11/01/2021

Effective date

11/01/2021

Expiration date

02/24/2022

DEPARTMENT OF REGULATORY AGENCIES

Division of Professions and Occupations - Board of Nursing

NURSING RULES AND REGULATIONS

3 CCR 716-1

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

…

1.31 RULES REGARDING THE USE OF BENZODIAZEPINES

The basis for the Board's promulgation of these rules and regulations by the State Board of Nursing is set forth in sections 12-20-204(1), 12-255-107(1)(j), 12-255-107, and 12-30-109(6), C.R.S.

The purpose for the Board's promulgation of these rules and regulations is to implement rules required by section 12-30-109(6), C.R.S., related to requirements for prescribing benzodiazepines to patients for whom licensees have not previously prescribed benzodiazepines within the last twelve months.

A. Licensees must limit any prescription for a continuous benzodiazepine to a 30-day supply, for any patient to whom the licensee has not prescribed a benzodiazepine in the last 12 months.

B. Prior to prescribing the second fill of a benzodiazepine, a licensee must comply with the requirements of section 12-280-404(4), C.R.S. Failure to comply with section 12-280-404(4), C.R.S., constitutes unprofessional conduct or grounds for discipline under section 12-255-120, C.R.S.

C. The limitation stated in section (A) of this Rule does not apply to patients for whom licensees prescribe benzodiazepines for the following conditions:

    1. Epilepsy;

    2. A seizure, a seizure disorder, or a suspected seizure disorder;

    3. Spasticity;

    4. Alcohol withdrawal; or

    5. A neurological condition, including a post-traumatic brain injury or catatonia.

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

Adopted: October 27, 2021
Effective: November 1, 2021

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for an EMERGENCY RULE

State Board of Nursing

On June 28, 2021, Governor Jared Polis signed Colorado House Bill 21-1276 (*Concerning the prevention of substance use disorders*). This bill takes effect on November 1, 2021.

BASIS
The basis for this rule is to carry out the provisions of Colorado House Bill 21-1276, and the Nurse and Nurse Aide Practice Act at section 12-255-101, *et seq.*, C.R.S.

PURPOSE
The attached rule is promulgated on an emergency basis to implement Colorado House Bill 21-1276, and comply with the bill's November 1, 2021, effective date.

JUSTIFICATION
Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The specific statutory authorities that authorize this emergency rulemaking is pursuant to sections 12-20-204(1), 12-30-109(6), 12-255-107, and 24-4-103(6)(a), C.R.S. The adoption of this rule on an emergency basis is imperatively necessary to comply with the requirements and effective date of state law. This temporary/emergency rule takes effect on November 1, 2021, and will remain in effect for no more than 120 days after the date of adoption of this temporary/emergency rule.

Adopted by the Board on this 27th day of October 2021.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

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Office of the Attorney General

Tracking number: 2021-00694

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Board of Nursing

on 10/27/2021

3 CCR 716-1

NURSING RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 10/27/2021 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.

November 15, 2021 11:29:19

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Board of Veterinary Medicine

CCR number

4 CCR 727-1

Rule title

4 CCR 727-1 VETERINARY MEDICINE RULES AND REGULATIONS 1 - eff 11/01/2021

Effective date

11/01/2021

Expiration date

02/11/2022

DEPARTMENT OF REGULATORY AGENCIES

State Board of Veterinary Medicine

VETERINARY MEDICINE RULES AND REGULATIONS

4 CCR 727-1

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

…

1.26 Rules Regarding the Use of Benzodiazepine

The basis for the Board's promulgation of these rules and regulations is sections 12-20-204(1), 12-315-106(5)(g) and 12-315-126, C.R.S. The specific statutory authority for the promulgation of this Rule is section 12-30-109(6), C.R.S.

The purpose for the Board's promulgation of these rules and regulations are to implement rules required by section 12-30-109(6), C.R.S., related to requirements for prescribing benzodiazepines to patients for whom licensees have not previously prescribed benzodiazepines within the last twelve months.

A. Licensees must limit any prescription for a benzodiazepine, which shall not exceed 30 continuous days, that a prescriber may prescribe for a patient who has not received a benzodiazepine prescription from a prescriber within the last 12 months.

B. Prior to prescribing the second fill of a benzodiazepine, a licensee must comply with the requirements of section 12-280-404(4), C.R.S. Failure to comply with section 12-280-404(4), C.R.S., constitutes unprofessional conduct or grounds for discipline under section 12-315-112, C.R.S.

C. The limitation stated in section (A) of this Rule does not apply to patients for whom licensees prescribe benzodiazepines for the following conditions:

   1) Epilepsy;

   2) A seizure or seizure disorder, or suspected seizure disorder;

   3) Spasticity; or

   4) A neurological condition, including a posttraumatic brain injury or catatonia.

D. These rules do not require or encourage abrupt discontinuation, limitation, or withdrawal of benzodiazepines. Licensees are expected to follow generally accepted standards of veterinary medicine practice, based on an individual patient's needs, in tapering benzodiazepine prescriptions.

Editor's Notes

History

Rules 1.00, 4.00 eff. 09/30/2007.
Rule 4.00 eff. 01/30/2008.
Entire rule eff. 12/30/2011.
Rule I.B eff. 08/30/2012.
Rule I.B emer. rule eff. 02/08/2013.
Rules I.A, 1.B, 1.E eff. 05/30/2013.
Rule I.A eff. 06/14/2013.
Rules I.B, II.A.17 eff. 09/30/2013.
Rule I eff. 08/14/2014.
Rules 1.2 A.8-18, 1.2 E.4, 1.2 G eff. 11/30/2019.
Rule 1.23 emer. rule eff. 05/01/2020; expired 08/29/2020.
Rule 1.24 emer. rule eff. 05/11/2020; expired 09/08/2020.
Rule 1.23 emer. rule eff. 08/30/2020; expired 12/28/2020.
Rule 1.24 emer. rule eff. 09/09/2020.
Entire rule eff. 10/15/2020.
Rule 1.10 B eff. 12/15/2020.
Rules 1.24, 1.25 emer. rules eff. 12/28/2020.
Rule 1.25 emer. rule eff. 01/11/2021.
Rules 1.4 E-F, 1.12 C eff. 04/14/2021.
Rules 1.24, 1.25 emer. rules eff. 04/27/2021.
Rule 1.25 emer. rule eff. 05/11/2021.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for an EMERGENCY RULE

State Board of Veterinary Medicine

On June 28, 2021, Governor Jared Polis signed Colorado House Bill 21-1276 (*Concerning the prevention of substance use disorders*). This bill takes effect on November 1, 2021.

BASIS
The basis for this rule is to carry out the provisions of Colorado House Bill 21-1276, and the Veterinarian Practice Act at section 12-315-101, *et seq.*, C.R.S.

PURPOSE
The attached rule is promulgated on an emergency basis to implement Colorado House Bill 21-1276, and comply with the bill's November 1, 2021, effective date.

JUSTIFICATION
Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The specific statutory authorities that authorize this emergency rulemaking is pursuant to sections 12-20-204(1), 12-30-109(6), 12-315-106(5)(g), and 24-4-103(6)(a), C.R.S. The adoption of this rule on an emergency basis is imperatively necessary to comply with the requirements and effective date of state law. This temporary/emergency rule takes effect on November 1, 2021, and will remain in effect for no more than 120 days after the date of adoption of this temporary/emergency rule.

Adopted by the Board on this 14th day of October 2021.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

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Office of the Attorney General

Tracking number: 2021-00666

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Board of Veterinary Medicine

on 10/14/2021

4 CCR 727-1

VETERINARY MEDICINE RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 10/14/2021 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.

October 29, 2021 14:40:25

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Public Health and Environment

Agency

Colorado State Board of Health

CCR number

6 CCR 1014-5

Rule title

6 CCR 1014-5 OFFICE OF HEALTH EQUITY RULES FOR THE HEALTH DISPARITIES AND COMMUNITY GRANT PROGRAM 1 - eff 10/21/2021

Effective date

10/21/2021

Expiration date

02/18/2022

[Publication Instructions: Replace all of existing 6 CCR 1014-5, including the title block, with all the text below.]

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Colorado State Board of Health

OFFICE OF HEALTH EQUITY RULES FOR THE HEALTH DISPARITIES AND COMMUNITY GRANT PROGRAM

6 CCR 1014-5

Adopted by the Board of Health on October 21, 2021. Effective October 21, 2021.

1.1 Definitions

(1) "Commission" means the Health Equity Commission that, pursuant to Section 25-4-2206, C.R.S., advises the department on alignment, education, and capacity building for state and local health programs and community-based organizations for the promotion of health equity and eliminating health disparities.

(2) "Grant Program" means the Health Disparities and Community Grant Program created in Section 25-4-2203, C.R.S. to provide financial support for statewide initiatives that address prevention, early detection, and treatment of cancer and cardiovascular and pulmonary diseases in underrepresented populations and to positively affect social determinants of health to reduce the risk of future disease and exacerbating health disparities in underrepresented populations.

(3) "Grant Program priorities" means areas of emphasis for grantees as determined for the grant cycle.

(4) “Office of Health Equity” means the office administering the Grant Program.

(5) “State Board” means the Colorado State Board of Health.

1.2 Procedures for Grant Application

(1) Grant Application Contents.

(a) At a minimum, all applications shall be submitted to the department in accordance with these rules and shall contain the following information:

(i) A description of the specific needs of the community or population to be served.

(ii) A description of:

(A) How the application meets at least one of the following program criteria:

1. For money allocated to the Grant Program pursuant to section 24-22-117(2)(d)(III), related to the prevention, early detection, and treatment of the cancer, cardiovascular, and pulmonary diseases, at least one of the following:

(a) Translating evidence-based strategies regarding the prevention and early detection of cancer, cardiovascular disease, and chronic pulmonary

disease into practical application in healthcare, public health, workplace and community settings.

(b) Providing appropriate diagnosis and treatment services for anyone who has abnormalities discovered in screening and early detection programs funded through this initiative.

(c) Implementing education programs for the public and healthcare providers regarding the prevention, early detection and treatment of cancer, cardiovascular disease and chronic pulmonary disease.

(d) Providing evidence-based strategies to overcome health disparities in the prevention and early detection of cancer, cardiovascular disease and chronic pulmonary disease.

(e) Providing population-based prevention work focused on influencing social determinants of health to advance health equity for underrepresented populations.

2. For any other money allocated to the Grant Program:

(a) Providing population-based prevention work focused on influencing social determinants of health to advance health equity for underrepresented populations and

(b) Applicants for organizational planning grants to receive grant money to reduce health disparities in underrepresented communities through policy and systems changes regarding the social determinants of health shall demonstrate at least one of the following:

(i) Specifications of strategic planning to achieve health equity;

(ii) Building the capacity of staff and volunteers;

(iii) Technical training and assistance within the community organization;

(iv) How the impact on the community by applicant will be evaluated.

(B) For grants meeting the criteria of Section (1)(a)(A)(1) related to the prevention, early detection, and treatment of the cancer, cardiovascular, and pulmonary diseases, how the application addresses the prevention, early detection, and treatment of cancer, cardiovascular disease, or chronic pulmonary diseases, in underrepresented populations.

(C) How the application meets the Grant Program priorities identified for the grant cycle.

(iii) A written evaluation plan.

(2) Procedures and timelines for Grant Application.

(a) Grant applications may be solicited on dates determined by the department.

1.3 Criteria for Selecting Entities

(1) The following criteria shall be used for selecting potential grantees:

(a) The applicant submits a completed application in accordance with the requirements in Section 1.2 and as indicated in the formal state solicitation;

(b) For Grant Program applications meeting the criteria of Section (1)(a)(A)(1) of prevention, early detection, and treatment of cancer, cardiovascular, and pulmonary disease, the applicant does not use grant monies to supplant funding for existing programs;

(c) The applicant has the capacity to adequately administer and implement the grant.

(d) For any other money allocated to the Grant Program: the applicant must work towards reducing health disparities in underrepresented communities through policy and systems changes regarding the social determinants of health.

(2) The Commission shall appoint a review committee to review the applications received and make recommendations to the Commission regarding the entities that may receive grants, the amounts of the grants, and the duration of the grant, which cannot exceed five (5) years. The Commission shall finalize the recommendations for funding and provide them to the State Board. The State Board shall ensure that awards are consistent with the purpose of the Grant Program.

1.4 Responsibilities of Grantees

(1) Participate in the program evaluation and submit progress reports, including, but not limited to, the following:

(a) Written evaluation plan at the inception of the program;

(b) Progress reports as specified in the state contract;

(c) Evaluation updates and final evaluation report as specified in the state contract.

(2) Grantees who fail to comply with Grant Program requirements may be terminated from the Grant Program for non-performance and potentially denied future funding opportunities.

(3) The moneys shall not be used for the purposes of lobbying as defined in Section 24-6-301 (3.5)(a), C.R.S. or to support or oppose any ballot issue or ballot question.

1.5 Grant Program Effectiveness

(1) The Office of Health Equity and the State Board shall determine the criteria for evaluating the effectiveness of the programs that receive grants.

EMERGENCY JUSTIFICATION
for Amendments to
6 CCR 1014-5 Office of Health Equity Rules for the Heath Disparities and Community Grant Program

Emergency Rulemaking Finding and Justification:
An emergency rulemaking, which waives the initial Administrative Procedure Act noticing requirements, is necessary to comply with state law. Emergency rulemaking is authorized pursuant to section 24-4-103(6), C.R.S. Senate Bill 21-181 requires rules be adopted by the Board prior to a grant application being released for the appropriated $4.7 million for fiscal year 2021-22. Any funds that grantees do not spend by June 30, 2022 will revert to the General Fund (unless a special one-year roll forward of the money and spending authority is granted).

This emergency rule shall become effective on adoption. It will be effective for no more than 120 days after its adoption unless made permanent through a rulemaking that satisfies the Administrative Act noticing requirements.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

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DEPARTMENT OF LAW

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Office of the Attorney General

Tracking number: 2021-00692

Opinion of the Attorney General rendered in connection with the rules adopted by the

State Board of Health

on 10/21/2021

6 CCR 1014-5

OFFICE OF HEALTH EQUITY RULES FOR THE HEALTH DISPARITIES AND COMMUNITY GRANT PROGRAM

The above-referenced rules were submitted to this office on 10/25/2021 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.

October 29, 2021 14:44:27

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Terminated Rulemaking

Department

Department of Regulatory Agencies

Agency

Division of Insurance

CCR number

3 CCR 702-4 Series 4-2

Tracking number

2021-00515

Termination date

11/04/2021

Reason for termination

Based upon consideration of public comments received during the rulemaking process and concerns raised about the legal authority of the Division to implement the law in the large group market, the Division is withdrawing draft proposed new Regulation 4-2-79, Concerning Infertility Coverage by Health Benefit Plans, at this time.

Calendar of Hearings

Hearing Date/Time	Agency	Location
12/16/2021 10:00 AM	Liquor and Tobacco Enforcement Division	VIRTUAL https://meet.google.com/ycu-zocv-zbc
12/16/2021 09:15 AM	Division of Gaming - Rules promulgated by Gaming Commission	1707 Cole Blvd, Redrocks conference room, Lakewood, CO 80401
12/20/2021 10:00 AM	Administrator-Uniform Consumer Credit Code and Commission on Consumer Credit	Webinar only: https://us02web.zoom.us/j/84497015236?pwd=cUdsSnRvbDk0dGY2N0NPSjVSNlhMZz09
12/15/2021 09:30 AM	Colorado State Patrol	TABLE MOUNTAIN INN, 1310 WASHINGTON AVE, GOLDEN CO 80401 AND ONLINE (TBA)