

# Colorado Register



**41 CR 21**

**Volume 41 , No. 21**

**November 10, 2018**

# 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](mailto:rules@sos.state.co.us).

# Notice of Proposed Rulemaking

**Tracking number**

2018-00575

**Department**

100,800 - Department of Personnel and Administration

**Agency**

103 - Division of Central Services

**CCR number**

1 CCR 103-1

**Rule title**

DIVISION OF CENTRAL SERVICES RULES

## Rulemaking Hearing

**Date**

12/04/2018

**Time**

02:00 PM

**Location**

1525 Sherman St., Room 104

**Subjects and issues involved**

The general purpose of the Executive Director in conducting the rulemaking was to provide, with regards to the administration of Central Services, for the following:

- (a)Change references of the rule authority from the Division of Central Services to the Department of Personnel & Administration;
- (b)Clarify contemporary practices found in Rules 1 CCR 103-1, regarding issuance of waiver requests;
- (c)Modify Chapter 2 regarding handling of various fleet vehicle citations, tolls, tickets, parking fees, and taxable commuting ;
- (d)Repeal the majority of Chapter 3 regarding taxability of commuter vehicles and refer to the Office of State Controllers guidance on taxable commuting;

**Statutory authority**

One or more of the following: §24-30-1101(10(a), §24-30-1104(1), §24-30-11121113, §24-30-1115, C.R.S., and HB17-1296.

**Contact information****Name**

Doug Platt

**Title**

Communication Manager

**Telephone**

13038666095

**Email**

doug.platt@state.co.us



## DEPARTMENT OF PERSONNEL ~~AND~~ ADMINISTRATION

### ~~Division of Central Services~~

### ~~DIVISION OF CENTRAL SERVICES RULES~~

#### 1 CCR 103-1

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

---

#### Preamble

Unless otherwise noted in a specific provision, the Division Rules were adopted and made effective by the Executive Director on December 1, 2007.

This version reflects rulemaking by the Executive Director of the Department of Personnel & Administration as follows: to update references to the Division of Central Services to the Department of Personnel & Administration and update references to the interagency motor pool to the State Fleet pool ; to modify Chapter 1 regarding waiver requests; modify Chapter 2 regarding State Fleet handling of citations, tickets, tolls, and taxable commuting; repeal Chapter 3 regarding taxability of commuter vehicles and directing drivers and agencies to the applicability of State Controller guidance over taxability; modify Chapter 4 regarding acquisition of vehicles, underutilization of vehicles, vehicle availability, grant vehicles, and allowable vehicle logos; modify Chapter 5 regarding assignment of vehicles, and revocations; and Chapter 6 regarding utilization, effective February 1, 2019

~~Unless otherwise noted in a specific provision, the Division of Central Services Rules were adopted and made effective by the Executive Director on December 1, 2007.~~

~~This version reflects rulemaking by the Executive Director of the Department of Administration as follows: to modify 1.10.01 regarding types of equipment related to services; repeal of Travel Program Rules 20.00 —20.30.~~

#### 1.00 ~~Division of Central Services~~Department WaiversWaiver Type

##### ~~1.10~~ Types

##### .1 Service Equipment and Software Related to Services

Service equipment procurement that require waivers include, but is not limited to, postage meters, mail slitters, candler, addressing equipment, folding equipment, microfilm equipment, desktop scanners, high speed scanners, large format scanners, hand held scanners, printing presses, plate makers of any type, bindery equipment office copiers, desktop copiers, multi-function copiers, multi-function printers, desktop printers, network printers, mobile printers, and facsimile devices. A waiver is also required to procure any software required to use such service equipment; this waiver is required even if the agency has already acquired the service equipment.

##### .2 Personal Services

Personal services related functions that require waivers include, but are not limited to, hiring personnel, whether full time, temporary, or an agency, to perform services related to printing, imaging, binding, mail, microfilm, scanning, data entry, document conversion, document management, graphic arts, and fleet management.

##### .3 Services

Services requiring waivers include, but are not limited to, printing, bindery, imaging, mail related services, microfilm, scanning, data entry, document conversion, document management related services, graphic





Department of Personnel & Administration

---

**1.2010 Requests**

- .1 Agencies must request permission in writing for a waiver from the ~~Division of Central Services~~Department of Personnel & Administration.
- .2 Requests are reviewed on a project request specific basis.
- .3 Requests must include the key financial, quality or service rationale for the request as well as enough backup documentation to allow for an adequate evaluation.

**1.3020 Approvals**

- .1 Approval will be provided to the requesting agencies in writing.
- .2 Approvals are time limited on a project request specific basis.
- .3 Approvals are subject to periodic review by the Department of Personnel & Administration~~Division of Central Services~~ and subject to reporting requirements by the responsible agency.
- .4 Other conditions and requirements associated with the approval will be outlined in the written approval.

**1.4030 Denials**

Denials will be provided to the requesting agency in writing and will include the rationale for the denial and alternative solutions.

**2.00 ~~Interagency Motor Pool~~Department of Personnel & Administration Responsibilities****2.10 Responsibilities****2.11 ~~Division of Central Services' Responsibilities~~**

The Department of Personnel & Administration~~Division of Central Services~~ shall be responsible for the provision of vehicles in good operating condition, for use by state agencies at a competitive cost.

**2.12 State Agency Responsibilities****.1 General Requirements**

Employees of the state entrusted with ~~interagency motor~~State Fleet pool vehicles are responsible for the proper care, operation, maintenance, and protection of the vehicle while the vehicle is under rental by the employing and using agency. It is the responsibility of the requesting agency to ensure that the agency's employees who use an ~~interagency motor~~State Fleet pool vehicle are fully acquainted with the requirements of these rules.

**.2 Driver's License**

Assignment of ~~interagency motor~~State Fleet pool vehicles will be made only to state employees who hold a valid U.S. driver's license. It is the responsibility of the requesting agency to verify the license.

**2.20 Operator Responsibilities**

A state employee who operates an ~~an interagency motor~~[State Fleet](#) pool vehicle assumes full responsibility for the vehicle until its return to the ~~interagency motor~~[State Fleet](#) pool. The operator assumes all the responsibilities outlined in section ~~4.20-19~~ through ~~4.444.43~~. This includes personal possession of a valid U.S. driver's license, proper care of the vehicle, storage charges, and personal responsibility for parking ~~and~~ traffic violations, ~~tolls and any taxable commuting~~. State employees issued a vehicle are responsible for exercising reasonable diligence in the care of the vehicle at all times. Failure to take proper care of a ~~n~~[interagency motor\[State Fleet\]\(#\) pool vehicle may be justification to refuse further vehicle issuance and may result in the agency being billed directly for services.](#)

**2.2030 Use Charges**

Use charges will be billed to the user agencies when the vehicle is returned to the ~~interagency motor~~[State Fleet](#) pool or on a monthly basis if the vehicle is being used for on an extended basis. These use rates will be as currently in effect and published by the ~~Department of Personnel & Administration~~[Division of Central Services](#).

**3.00 ~~Commuting~~ Use of State-Owned Motor Vehicles by State Officers and Employees**

~~State agencies shall comply with the Office of the State Controller's Fiscal Rule, corresponding Policy, and Technical Guidance regarding taxable commuting.~~

~~State agencies shall submit an Individual Employee Assigned Vehicle Authorization form for any vehicle assigned to an individual state employee.~~

**3.0 Definitions**

As used in these rules:

- .1 ~~"Agency" means any department, agency, or institution of higher education participating in the State Fleet.~~
- .2 ~~"Commuting" means the required use of a state-owned motor vehicle by a state employee to drive between the employee's residence and principal or regular workplace(s). Exceptions and clarifications include:~~
  - a. ~~There is no commute if the employee works out of their home as their primary work location and does not report each day to one or more state business locations (owned or leased facilities). The employee must also not have an assigned office in any state business location.~~
  - b. ~~There is no commute if the employee works primarily out of their state vehicle and visits a state business location infrequently (not each day) for the purpose of attending meetings or to pick up or drop off work product. The employee must also not have an assigned office in any state business location.~~
  - c. ~~It is commuting if an employee is required to use a state vehicle to drive each day to a state business location, even if it is not the same location each day. For example, when an employee has two official work locations with a designated office in one or both.~~
- .3 ~~"Control employee" means:~~
  - a. ~~An elected official, or~~
  - b. ~~An employee whose compensation is at least as much as that paid to a federal government employee holding a position at Executive Level V as specified in IRS regulations at 26 C.F.R. Section 1.61-21.~~

---

Department of Personnel & Administration

---

- .4 "Convenience of the State" means that the commuting is required and that it:
- Promotes a legitimate, nonpartisan, governmental interest of the State;
  - Promotes the efficient operation of the state motor vehicle fleet system; and
  - Is cost effective to the state agency authorizing commuting.
- .5 "De minimis" means the personal use of a State-owned motor vehicle that is of so small a value that accounting for it would be unreasonable or administratively impractical. De minimis includes a stop for lunch between two official business destinations, or occasionally taking a State-owned motor vehicle to the employee's residence the evening prior to a planned business trip or the evening following an after-business-hours conclusion of a business trip.
- .6 "Executive director" means the head of any principal department, agency, or institution of higher education.
- .7 "Qualified non-personal use vehicle" is any vehicle the employee is not likely to use more than minimally for personal purposes because of its design, such as clearly marked police and fire vehicles, unmarked vehicles officially authorized for use by law enforcement officers, vehicles designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds, as well as many other vehicle types and configurations specifically defined in IRS regulations at 26 C.F.R. Section 1.274-5T.
- .8 "State employee" means any person defined as a state officer or employee by 24-10-103(4), C.R.S.
- .9 "State-owned motor vehicle" is as defined in section 24-30-1102(6), C.R.S. and including those that are leased to the State.

**3.1 Requests**

- .1 Only the Executive Director may authorize commuting. It is not mandatory that any individual or position in the State be required to commute. The decision to require commuting is up to the Executive Director. To authorize commuting, the executive director must determine that it is required for the convenience of the State. The Executive Director will also approve the classification (taxable, exempt or reimbursable) for the required commuter. The executive director shall also determine when an employee starts and ends the authorized use.
- .2 An authorization shall be made on the basis of the individual employee, the work function, the type and configuration of the vehicle, and the convenience to the State. Requiring one employee to commute does not necessarily mean that other employees with the same job title, classification, job function or other specifications should also be required to commute. Authorization is not made on the basis of a specific motor vehicle. Changes in specific motor vehicle assignment, but remaining with the same type and configuration, do not require reauthorization.
- .3 The executive director must document the authorization of commuting by completing a separate State Fleet Management (SFM) Commuting Authorization Form for each state employee required to commute. If the commuting is taxable or if the commuting requires employee reimbursement, the SFM Commuting Authorization Form must also be signed by the agency's payroll officer to verify that commuting income will be imputed or that the monthly withdrawal has been scheduled for payroll purposes. The completed form must be submitted to SFM, Division of Central Services.

---

Department of Personnel & Administration

---

- .4 Any changes relative to a state employee's commuter status or the authorization of a new commuter must be reported immediately to SFM, Division of Central Services by the authorizing agency, and if applicable to the agency payroll contact.
- .5 SFM will send a verification of active approvals to each agency at least annually, which must be reviewed, approved, and returned by the executive director.
- .6 A separate form will be required for each employee with a state vehicle at their home who is designated as a "non-commuter" because they work directly out of their home or vehicle and do not have a permanently assigned office in a state business facility.

**3.2 Classifications and Exemptions**

- .1 Commuting may be classified as exempt, taxable, or reimbursable depending on the vehicle type or configuration (ie. IRS defined as "qualified non-personal use"), the work function of the commuting employee, and other specific requirements. These three classifications are for tax or reimbursement purposes only and are not definitions of who should or should not be required to commute. However, once the decision has been made to require commuting for a specific individual, it is important that they be treated for taxation or reimbursement in the same way as any other required commuter in the same circumstances.
- .2 Exempt — A commuter may be exempt from reimbursement or taxation if qualified under the provisions of the IRS definition of "non-qualified personal use". In the State this would include:
  - a. Vehicles that are not likely to be used other than minimally for personal use because of the unique size or unusual configuration of the vehicle. (State Fleet Management can provide additional clarification concerning the specifics of these requirements.)
  - b. Law enforcement vehicles that are outfitted and clearly marked as law enforcement.
  - c. Unmarked vehicles used by state law enforcement officers qualified as peace officers under section 16-2.5-101 C.R.S and who are working in a job function that requires this status as a condition of their job.
- .3 Taxable — Taxable commuting may be approved for a state employee where it can be clearly demonstrated that the convenience to the State is greater than the benefit to the individual. This would include job functions where there is a health/safety benefit to the state citizens as a result of the commuter being "on call" to respond to emergency situations where citizens' well being could be impacted. Examples would include individuals who are either "first responders" or whose PDQ's specifically require 24/7 availability to respond to health, life, or safety emergencies.
- .4 Reimbursable — If a commuter is not classified as exempt or taxable based on the above criteria reimbursable commuting may be approved for a state employee who is required to commute for the benefit of the State, and for bona fide non-compensatory business reasons.
- .5 The mere fact that an employee performs a job function covered under one of the three categories outlined above does not mean that the employee should be required or approved to commute.

**3.3 Limitations**

- .1 Use of a State-owned or leased motor vehicle by a state employee for any personal purpose is strictly prohibited, except as otherwise provided in these rules. This includes:

---

Department of Personnel & Administration

---

- a. ~~transporting any person unrelated to official business, including family members, friends, or relatives;~~
  - b. ~~any recreational use;~~
  - c. ~~transporting or storing personal property of any kind that is not related to the employee's official business;~~
  - d. ~~use of a State-owned motor vehicle in support of any private, charitable, or political entity or activity;~~
  - e. ~~any otherwise unlawful use.~~
- .2 ~~State-owned motor vehicles authorized for any type of commuting will be returned to the commuter's agency during all extended periods of foreseeable non-use such as a commuter's use of annual leave of longer than one week or extended sick leave beyond two weeks.~~
- .3 ~~Contract workers shall not be permitted to commute.~~

**3.4 Valuation and Taxation**

- .1 ~~Exempt commuting is not taxable or subject to reimbursement.~~
- .2 ~~Taxable commuting shall be imputed as income for non-control employees at a rate established under the "commuter valuation rule" pursuant to IRS Regulations 26 C.F.R. Section 1.61-21. Imputed commuting income shall be for 20 days per calendar month regardless of the actual number of commuting days per month, and shall be imputed on a monthly basis as part of the normal pay process.~~
- .3 ~~Reimbursable commuting will be based on a cost per mile rate established by the Division of Central Services.~~
- a. ~~The rate will be established once each year with the intent of approximating the cost to the State of operating a typical basic transportation vehicle in the State's fleet. The commuting cost per mile will include an operating cost component that approximates the actual operating cost of a typical State transportation vehicle plus a component to account for a portion of the ownership cost. The commuting cost per mile will be the same for all commuters regardless of the specific type of vehicle used in the commuting since the decision of vehicle assignment is made by the department and not the individual and the value accrued to the individual commuter is not dependent on the type of vehicle driven.~~
  - b. ~~The individual commuter reimbursement will be a fixed monthly fee calculated by multiplying the estimated daily commuting miles (based on daily round trip commute miles provided by the commuter) times the commuting cost per mile times 20 days per month. The monthly rate will be based on 20 days per month regardless of the number of days the vehicle is actually used in any given month. This fixed monthly fee will remain in effect for the entire year unless the round trip commute distance changes or the commuting requirement is canceled.~~
  - c. ~~The minimum monthly reimbursement fee will be at a rate established under the "commuter valuation rule" pursuant to IRS Regulations 26 C.F.R. Section 1.61-21.~~
  - d. ~~Reimbursement shall be deducted from the employee's salary by the state agency authorizing the commuting.~~

Department of Personnel & Administration

---

- .4 ~~Control employees should contact State Fleet Management, Division of Central Services for specific instructions.~~

**3.5 Enforcement**

- .1 ~~Each department is responsible for regularly reviewing and monitoring the status of every employee required and authorized for commuting by their department. The status shall be reviewed for, but not limited to:~~
- a. ~~Driver compliance with the commuting rules and regulations.~~
  - b. ~~Ongoing validity of the justification and cost effectiveness for the requirement to commute.~~
  - d. ~~Changes relative to any state employee's commuter status.~~
  - e. ~~Changes in vehicle type or configuration that may affect taxable status.~~
- .2 ~~Each department is responsible for imposing restrictions or could entirely revoke an employee's authorization if that agency determines that the employee:~~
- a. ~~Has abused or failed to comply with the commuting rules and regulations.~~
  - b. ~~Fails to notify payroll of changes that would affect the employee's status as a taxable commuter.~~
  - c. ~~Consistently fails to provide updated documentation that would affect the status or his/her authorization.~~
- .3 ~~The Director of the Division of Central Services, Department of Personnel & Administration may revoke vehicle authorizations or impose restrictions on any department or agency that consistently does not meet criteria or ignores requests from State Fleet Management for information in order to bring the employee(s) authorization records into full compliance with the commuting rules and regulations. Agencies wishing to appeal the Division Director's action under this rule may do so in writing within ten (10) working days of the action to the Executive Director of the Department of Personnel & Administration. The Executive Director will issue a written decision within 20 calendar days, which shall be binding and final.~~
- .4 ~~A state agency may be held financially responsible for any penalties due to the failure to comply with the provisions of these rules.~~
- .5 ~~Exceptions to these rules may only be made in the event of unusual individual circumstances that are not clearly addressed in these rules. Any exception to these rules requires the approval of both the department's Executive Director and the Director of the Division of Central Services.~~
- 4.00 Motor Vehicle Acquisition, Operation, Maintenance, Repair, and Disposal****Size of Fleet**
- 4.10 Vehicle Acquisition**
- 4.11 Size of State Fleet**

The size of the state fleet may be increased only as a result of authorized new or expanded programs.



**4.12 Additional/Replacement Vehicles**

Requests from any state agency for additional or replacement vehicles will be handled as follows:

- .1 Additional Vehicles. State agencies requesting an additional vehicle on permanent assignment from State Fleet Management (SFM) will be required to complete an [Additional-Vehicle Request Form](#). Supporting data should be submitted with the completed form and should include copies of recent legislation, Long Bill and any other supporting data specifically addressing the new or expanded program for which vehicle support is requested. An endorsement by the ~~agencies-~~ [agency's](#) fiscal officer, ~~or and~~ a written approval from the agency's OSPB analyst may be required. [Prior to submission of the Vehicle Request Form the agency will review their Underutilized vehicles under their use for re-assignment and reallocation to maximize the use of state resources.](#)
- .2 Short-term Requirements. Short-term needs, such as seasonal requirements, if approved, will be met with existing vehicle inventory and prioritized with all state-wide needs. Requests for short-term assignments will be made by the requesting agency in a format compatible with procedures established by SFM. When existing vehicles are assigned on a temporary basis, every effort will be made to assign safe operating vehicles appropriate for the intended use. Short-term assignments will typically not exceed 12-months.
- .3 Vehicle Rotations. If a used vehicle is requested as an addition, or a rotation (for accidents, uneconomical repair, change in use requirements, etc.), that vehicle will then be treated as any other permanently assigned vehicle.
- .4 Vehicle Availability. If requests for short-term assignments are approved, but the vehicles are not available within the existing fleet, SFM will work with the requesting agency to acquire the vehicle [by commercial lease through the appropriate financial mechanism](#) for a specified time period. The agency's fiscal officer may need to verify that funds are available to cover the costs of any lease. SFM cannot guarantee the availability of additional vehicles when required.
- .5 Grant Funded Vehicles. Agencies will notify SFM of those grants that will have a material impact on fleet acquisition. Agencies are responsible for compliance with all Grant specifications and requirements. [Grant vehicles will be titled and registered as State Fleet owned vehicles, or, as specified by the grant.](#)
- .6 Fiscal Responsibility. Each agency must work with SFM to ensure that adequate funding levels are determined, requested, and adhered to once approved. When vehicles are replaced, the agency will be held fiscally responsible for any fixed term obligations unless otherwise agreed upon with SFM. Fiscal planning and responsibility will include monthly fixed payments to cover the fixed term obligations for the cost of the vehicle and attachments plus a monthly fixed management fee. Operating costs to cover fuel, maintenance, and [accident-vehicle damage](#) expenses are charged by SFM on a monthly cost per mile basis.
- .7 Out of Cycle Replacements. Situations that require vehicles to be replaced "out-of-cycle" such as a unique, mission critical vehicle destroyed in an [accidentincident](#), will be addressed on a case-by-case basis, and may require OSPB approval.

**4.13 Minimum [Miles Utilization](#) Per Year**

SFM will not acquire (purchase or lease) any vehicle for permanent assignment unless it can be demonstrated that each vehicle requested will meet the minimum required [mileage-utilization](#) for the utilization classification corresponding to the vehicle's intended work function.

**4.14 Purchasing Rules**

- .1 All vehicle acquisitions, whether by purchase or lease, will be made in compliance with the State's existing purchasing procedures and rules. [Vehicles in use that do not continue to meet this minimum threshold of utilization will require justification from the operating](#)



Department of Personnel & Administration

---

[agency submitted to State Fleet Management. If the proper justification is not received from the agency the vehicle may be removed from the operating agency and evaluated for reassignment.](#)

.2

---

Department of Personnel & Administration

---

- .3 SFM will provide each agency, through its designated [Vehicle-Fleet](#) Coordinators, various reports to identify vehicles for replacement as part of the annual state budget cycle. Each year, by a date specified by SFM, all pending vehicle purchases for the current fiscal year will be finalized. Any changes (vehicle types, options, etc.) to this list will not be accepted by SFM after this date, unless extraordinary circumstances support change requests.
- .4 In addition to vehicle replacements, agencies will submit and identify additional vehicle needs requests that may result from expanded programs or additional funding. These requests will be reviewed by SFM and may be subject to legislative approval for permanent assignment. Agencies will notify SFM immediately upon receiving approval for additional vehicle funding.

**4.15 Size of Vehicles**

The size of any motor vehicle shall not be greater than is necessary to accomplish its purpose. All efforts will be directed toward acquiring cost-effective vehicles.

**4.16 Vehicle Selection/Life-Cycle Costing**

- .1 The primary consideration in selecting the appropriate vehicles is to match the vehicle to the job it is expected to perform. Vehicles that meet usage requirements as well as service and maintenance requirements will be given preference.
- .2 Aside from the initial cost of the vehicle when purchased new, other factors may be considered, including:
  - a. Operating and Maintenance Costs. The anticipated cost of fuel and maintenance.
  - b. Resale Value. The resale value (salvage value) of the vehicle, after its useful life is exhausted.
  - c. Fuel Economy. Low energy consumption shall be a favorable factor in determining the low responsible bidder.
  - d. [Environmental impact. State initiatives supporting the continued quality of the environment may impact vehicle purchase decisions.](#)

**4.17 Vehicle Specifications**

- .1 Vehicle specifications will be written with the goal of standardizing vehicle purchases as much as possible.
- .2 Vehicle purchases shall be based on specifications as requested by the state agency, developed in cooperation and consultation with the [Department Division of Central Services](#) and the Motor Vehicle Advisory Council and must comply with all fiscal and procurement rules.
- .3 SFM will provide base level vehicles with agency-justified options.
- .4 [A State agency shall notify the Department of any plans to modify the vehicle to make it a "Qualified Nonpersonal Use Vehicle" under IRS regulations. The Department will provide the agency with a response of whether the agency's plans for the vehicle comply with IRS regulations.](#)

**4.18 License Plates, Titles, and Registrations**

- .1 As new vehicles are received into the Program, these vehicles will be registered with the Department of Revenue, and license plates issued by the Department of Revenue will be assigned and attached to each vehicle.
- .2 "Undercover plates" will be issued only for vehicles directly involved in undercover law enforcement activities, where the employee's identity must be kept ~~secret~~[anonymous](#), or

**Department of Personnel & Administration**

---

as otherwise allowed by Department of Revenue policy.

---

Department of Personnel & Administration

---

- .3 Personalized plates are not authorized for state-owned vehicles, regardless of who pays for the plates. ~~Only official state decals may be applied to state vehicles. Other bumper stickers, etc. are prohibited.~~
- .4 Assigned license plates may not be moved from one vehicle to another.
- .5 In the event license plates are lost or stolen, the Agency will have new plates issued, at their own cost, with a new number, and will notify SFM of the change immediately. SFM's records will be adjusted to reflect the change, and a new fuel card will be ordered.
- .6 All vehicle titles, regardless of ownership, will be kept by SFM. Titles to vehicles owned by other state agencies will be returned to the state agency for purposes of vehicle disposal. Following such disposal, appropriate sale data, including date of sale, sale price, and name of buyer, will be promptly reported to SFM. The title to any unsold vehicle will be returned to SFM and corrected in the database. Agencies authorized to dispose of their own vehicles are responsible for meeting all requirements as the seller of a motor vehicle in Colorado.
- .7 Annually, the Department of Revenue, Motor Vehicle Division, will mail to the vehicle user a registration renewal notice. The registration renewal and, where required, the emissions test will be the responsibility of the agency to which the vehicle is assigned.
  - a. If the location to which a vehicle is assigned is changed, SFM and the Department of Revenue, Motor Vehicle Division, must be notified of the change and given a new mailing address to which future renewal notices may be sent. Such notification will be the responsibility of the using agency.

**4.19 Branding and Logos**

Only official state decals may be applied to state vehicles. Other decals, Logos and bumper stickers, etc. are prohibited.

**4.20 Alternative Fueled Vehicles**

As requirements are set forth to implement increased usage of alternative fueled vehicles (AFV's), each agency will work with SFM to use and promote AFV's to the extent practicable to meet State and Federal requirements.

**4.21 Vehicle Operation****4.22 Use of State-Owned Vehicles**

State-owned vehicles are to be used for official state business only, and not for personal purposes.

**4.23 Commuting**

The use by a State employee of any State-owned vehicle for commuting must be required by the employing agency and approved in accordance with the [Office of the State Controller's](#) motor vehicle commuting rules (see rule 3.00).

**4.24 Traffic Rules**

All state employees are expected to operate the vehicle in a courteous manner and are required to comply with existing traffic laws. Any traffic citations issued to the driver, as a result of non-compliance, are the responsibility of the driver.

**4.25 Alcohol/Drugs**

No state-owned vehicle will be operated by any individual who is under the influence of alcohol or drugs. Section 42-4-1301, C.R.S. (2004). Smoking, or other tobacco use, is not permitted in state vehicles.

---

**4.26 Driver's License**

All authorized drivers of state-owned vehicles enrolled in the SFM Program must have in their possession a valid U.S. driver's license.

**4.27 Driver's Responsibilities**

- .1 Drivers of state-owned vehicles must assume certain basic responsibilities with regard to the vehicle with which they are entrusted. These responsibilities include proper care, operation, maintenance and security of the vehicle, required emissions inspections, fueling, maintaining tire pressure, checking fluid levels, cleaning, safety, etc. Drivers and agency vehicle coordinators are responsible for checking PM (Preventive Maintenance) schedules for each vehicle they operate or oversee to ensure that regularly scheduled maintenance is performed in a timely fashion.
- .2 State-owned vehicles may not be used for personal errands, including transporting family members or pets. An exception to transporting family members may be granted in those instances where that family member is functioning in an official state capacity. Operators of state-owned vehicles may not pick up hitchhikers or provide transportation for any unauthorized individual. In situations where public safety is a concern, as determined by a state employee on official state business, unauthorized individuals may be provided assistance including transportation to the nearest location where there is no longer an unsafe situation.
- .3 State-owned vehicles may not be loaned to or driven by any unauthorized individual.
- .4 Drivers are responsible for safe and legal operation of vehicles operated on behalf of official state business. Unlawful use of these vehicles that result in a ticket or citation is the responsibility of the driver. Furthermore, parking fees and tolls acquired while in the use of the vehicle, not preauthorized by the drivers employing agency are the driver's responsibility to pay.
- .5 All drivers and/or Vehicle Coordinators are expected to read and become familiar with the contents of the Manufacturer's Operator's Manual, and the SFM Vehicle Operator's Manual, both of which are furnished with each SFM vehicle. The Vehicle Operator's Manual contains a more detailed discussion of driver's responsibilities.

**4.28 Taking State-Owned Vehicles Out of the State or Out of the Country**

- .1 When approved by the agency employing the driver, state-owned vehicles may be taken out of the State, as required in the performance of official duties.
- .2 Vehicles may not be taken out of the United States without prior written notification and explanation from the state agency to the State Fleet Manager. Agencies taking vehicles out of the United States will be responsible for obtaining any necessary additional liability and collision insurance, at their expense, before the vehicle is taken across the border. Should the vehicle become inoperable (either because of accident damage or mechanical problems) while out of the country, the operator should contact his/her employing agency and SFM for assistance. Agencies will be responsible for any additional repair or service costs that are in excess of typical costs. (Travel to Mexico is discouraged.)

**4.29 Fuel Purchases**

All drivers of state-owned motor vehicles are expected to comply with the following regarding the purchase of fuel for state vehicles.

- .1 State fueling systems shall be used wherever practical. In the absence of such facility, self-service islands of retail outlets shall be used wherever available. Exceptions to this policy may be granted because of driver's physical limitations or emergency needs. The driver's supervisor shall document such exceptions. All purchased fuel should be of an appropriate grade of gasoline when available. Premium grades may be purchased when specifically required by the

Department of Personnel & Administration

---

~~manufacturer or on an occasional basis to maintain the efficiency of the fuel and ignition system within compliance of the SFM policy on Premium fuels.~~

Department of Personnel & Administration

---

- .2 State agencies with fuel dispensing capability are required to bill SFM on a regular, monthly basis. All invoices will contain individual transactions by license and/or asset number, date of fueling, number of gallons, price per gallon, and total cost.
- .3 SFM also furnishes a fuel card with each vehicle assigned. This card is honored by most major oil companies and can be used for purchasing fuel at commercial outlets, or as specified by SFM. Personal items may not be purchased with the fuel card. The fuel card is valid only for the vehicle described on the front of the card, and the cards may not be interchanged. No other State agency is authorized to issue fuel cards for vehicles in the SFM Program.
- .4 Where necessary, an employee may pay for fuel using personal funds and receive reimbursement from SFM through his/her own agency. Such reimbursement will be made only when a properly itemized and signed receipt is provided.
- .5 Fuel Cards are not to be used for services other than ~~emergency roadside help or~~ to purchase "top off" oil, washer fluid, wiper blades, ~~or~~ fuel station car washes, ~~or other parts or services of minimal cost.~~

**4.30 Accident Reporting**

Drivers of state vehicles shall exercise every precaution to prevent damage to the vehicle. The driver of the vehicle is responsible for notifying the following persons immediately, either in person or by telephone, of any accident in which the vehicle is involved: State Fleet Management; employee's official supervisor; and state, county, and local authorities as required by law. The vehicle driver shall record information pertaining to the accident ~~on an accident report~~ [the roadside incident](#) form DRM-01 as provided in the SFM Vehicle Packet. This form must be [completed by the driver and](#) submitted to the vehicle driver's official supervisor for review within 48 hours of the accident. This form, as filed by the driver and signed by the supervisor, shall be [used to complete the States online form and](#) turned in to the State Fleet Management and the Division of Risk Management within 72 hours of the accident. Accidents involving personal injuries must be reported to law enforcement immediately and to SFM within 24 hours of the accident (or on the next regular business day) by telephone and followed up with a written report. ~~The driver must file a "State of Colorado Report of Motor Vehicle Accident" (DR-2301) within ten days of an accident if the vehicle was damaged, or the accident resulted in bodily injury or death.~~

**4.31 Vehicle Maintenance****4.32 Preventative Maintenance**

All state-owned vehicles will be serviced on a regular basis, at frequencies and intervals appropriate for the vehicle assignment as determined by SFM. Every effort ~~should~~ [must](#) be made by the driver and vehicle coordinator to service the vehicle at or near the established service interval. Repairs required because of failure to follow the scheduled preventive maintenance may be the responsibility of the agency to which the vehicle is assigned. SFM will authorize those services deemed necessary based on vehicle service records. Vehicles more than 50% beyond the established schedule shall be deemed as "overdue" and will be reported to the agency vehicle coordinator for resolution. Continued overdue services may be reported to the agency ~~Executive Director~~ [leadership](#) for resolution.

**4.30 Statewide Price Agreements**

In areas of the State where they are available statewide price agreements such as replacement tires and glass, must be utilized for all covered repairs and services. Any exceptions to this policy must be approved by SFM.

**4.40 Vehicle Repairs****4.41 Vehicle Condition**

No state employee is expected to drive a State vehicle if the condition of the vehicle is determined to be unsafe. If an unsafe mechanical condition is discovered, it should be reported and corrected immediately. The driver should refer to the Vehicle Operator's Manual for instructions on how to report vehicle mechanical problems, instructions on after hours emergencies, and procedures for transport and towing.

**4.42 Procedure for Obtaining Repair Authorization**

- .1 If the vehicle's preventive maintenance schedule is adhered to, many otherwise needed repairs can be avoided. If repairs are needed, the driver should consult the Vehicle Operator's Manual, furnished with each vehicle. The Vehicle Operator's Manual, prepared by SFM, contains specific instructions for obtaining the necessary authorization for repairs. Neglecting reasonable maintenance practices may result in repairs billed directly to the agency or the driver.
- .2 Calls from private vendors requesting repair authorization must be made to the general SFM call center number. The request for repair authorization must be made--and authorization given— before any repairs are begun. The cost of work performed without proper pre-authorization, will be subject to review, and if found to be inappropriate, may be denied or billed to the using agency.

Private vendor mechanics may, for the purposes of repair and diagnosis, operate a state vehicle provided the garage meets the generally accepted requirements for liability insurance. Agencies are encouraged to develop their own internal security procedures for law enforcement vehicles including the use of "Out-of-Service" covers on light bars.

- .3 State garages are generally not required to obtain pre-authorization through SFM for vehicles assigned to their own agency (or institution), but will be expected to follow general procedures for state garages as established by SFM. State garages and state mechanics are expected to exercise good judgment when determining whether repairs are necessary and cost effective. All work submitted for payment may be reviewed for appropriateness by the State Fleet Call Center. Any work considered unnecessary or overcharged may be questioned and fully or partially denied payment. State garages are encouraged to pre-authorize if there is some doubt as to the appropriateness or cost effectiveness of the repair. Car washes performed at state garages will not be paid for by State Fleet Management.
- .4 Pre-authorization is required for work done on vehicles assigned outside the garage's agency (or institution), and the prices quoted will be subject to competitive scrutiny. In this regard, state garages will be treated in the same fashion as a private vendor.

**4.43 Process for Determining if Repairs are Are Justified**

Prior to authorizing any major mechanical repairs or major body repairs, SFM will make a determination as to whether the cost of the repair is economical and in the best interest of the State. Mechanics-Technicians in the Call Center will use their knowledge and experience in making this decision as well as other criteria including: the book value of the vehicle, the demand for uninterrupted vehicle support, the availability of a suitable used rotation vehicle from inventory, the anticipated remaining life of the vehicle due to age, mileage, and/or scheduled replacement, etc.\_



**4.44 Selection of Repair Facility**

SFM will refer drivers to authorized state owned or private repair facilities. In the case of an emergency occurring during hours that SFM is not available, the driver may obtain the minimum repairs necessary to safely continue the trip or wait until regular business hours. Drivers should be aware that obtaining repair services after regular business hours may not be possible. If repairs have NOT been performed properly, the driver must contact SFM immediately so that the Call Center staff can discuss the service quality with the vendor and negotiate remedies.

**4.50 ~~Vehicle Disposal Standards~~****4.51 Disposal Criteria**

SFM will review and approve all requests for vehicle disposal. One or more of the following shall be used in considering the disposal of state motor vehicles:

- .1 No Longer Needed - The State no longer has a need for the vehicle.
- .2 Minimum Replacement Criteria - State-owned vehicles will not normally be replaced until they meet the replacement criteria established by the State Fleet Management Program (considering mileage, cost, safety, and other relevant criteria).
- .3 Uneconomical to Repair - Vehicles that have sustained extensive damage or vehicles that require substantial mechanical repairs, may be disposed of earlier, if it can be shown that the cost of repairs would be uneconomical and the State's interests would be better served by disposing of the vehicle rather than repairing it.

**4.52 Methods of Disposal**

After a vehicle has met disposal criteria, the vehicle may be disposed of by public auction. If other methods of disposal are required because of unusual circumstances (out-of-state location, etc.) the method of disposal must be approved in advance by SFM.

**4.53 ~~Vehicle Turn-Turn-In Requirements~~**

Prior to turning a vehicle in to SFM, the Agency must:

- .1 Assure that the vehicle is reasonably clean and has at least a 1/4 tank of fuel.
- .2 Remove two-way radios, phones, hands-free equipment, security cages, law enforcement lighting, and other special equipment.
- .3 Remove all decals and undercover plates (replace with the regular state plate).
- .4 If vehicle is assigned in a full emissions test area, an emissions test must be valid for at least two months after the turn-in date.

.5 ~~Not meeting the minimum turn-in requirements may result in fees being accessed to the operating agency to accomplish this required work.~~

---

Department of Personnel & Administration

---

.5

.6 [Reporting Requirements](#)

.7

**4.60 [Vehicle Fleet Coordinator Reporting Requirements](#)**

- .1 Each agency will be required to designate an individual or individuals, who is/are knowledgeable about the agency's vehicle fleet, to serve as [Vehicle Fleet](#) Coordinators. Such designation will be at the [Department-Agency](#) level if possible, but additional designations may be arranged by mutual agreement with SFM. The individuals so designated will be the contact persons through whom SFM will communicate Fleet related matters.
- .2 The [Vehicle Fleet](#) Coordinators will be the key contacts in coordinating the following (but not limited to):
  - a. Routine and special reports.
  - b. Vehicle [accident-damage](#) reports.
  - c. Preventive maintenance and repairs.
  - d. Replacements and Additional Vehicle.
  - e. [Verifying and/or correcting vehicle data.](#)
  - f. [Vehicle assignments, ~~transfers, and~~ terminations.](#)
  - d. [Commuting requirements.](#)
  - g. [Vehicle needs and specifications.](#)
  - h. [DOR registrations and emissions compliance.](#)
  - i. [Monthly mileage reporting.](#)
  - j. [Communicating with internal agency fiscal officers to ensure that agency funding levels for vehicle expenses are properly managed.](#)
  - k. [In the event of an accident where the driver is at fault, the coordinator will be responsible for determining via agency leadership if the Driver/Operator was operating within the course and scope of their duties.](#)

**4.61 [Monthly Vehicle Odometer Reporting](#)**

- .1 For each vehicle permanently assigned, the using agency is required to furnish SFM with an accurate monthly odometer reading by a date specified by SFM. Failure to report odometer readings accurately may invalidate maintenance requirement alerts, and may subject the operating agency to additional repair charges.
- .2 If the odometer reading is not furnished to SFM by the specified monthly reporting date, the agency to whom the vehicle is assigned may be billed a default mileage. These odometer readings will be recorded through an on-line reporting tool or other method specified and approved by SFM.

**4.62 [Preventive Maintenance Reporting](#)**

- .01 Each agency is responsible for assuring that the preventive maintenance prescribed by SFM is followed for the vehicle(s) assigned to that agency.
- .2 [Each Agency is responsible for reporting any work performed by repair facilities on SFM](#)

Department of Personnel & Administration

---

[operated vehicles.](#)

**4.63 Emissions Test**

- .1 All state-owned vehicles assigned to areas within the [AIR-Pemissions](#) program area are subject to the emissions testing requirements of the State's [AIR-emissions P](#)program.
- .2 If an emissions test is required and the state vehicle fails the emissions test, it will either be brought into compliance or the vehicle will not be driven. SFM will pay for the expenses incurred to bring a vehicle into compliance only if such repairs are deemed economically feasible or reasonable alternatives are not available.
- .3 Each agency is responsible for monitoring the expiration date of the emissions [sticker-status](#) on the [windshield-vehicle](#) and getting the emissions test performed when it is due. SFM will pay for required emissions tests.

**4.64 Responsibility**

Citations [and fees](#) issued for expired emissions compliance are the responsibility of the operating agency.

**4.70 Noncompliance****4.70 Accountability**

State agencies and/or individual employees may be held financially accountable for all costs resulting from the violation of these rules relating to the misuse of state-owned motor vehicles. [It is the duty of all state employees to report fraudulent or illegal actions that do not comply with State rules and regulations. Failure to comply can result in personal liability or revocation of SFM services.](#)

**4.71 Revocation of Assignment**

Noncompliance with these rules may be grounds for revocation of vehicle assignment.

**4.72 Disciplinary Action**

At the discretion of the employing agency, corrective and/or disciplinary action may be appropriate for State employees found to be in violation of these rules.

**4.73 Other Fees and Charges**

SFM reserves the right to charge an administrative fee, or the full cost of repairs or service, for any of the following:

- .1 Improper use of the fuel card.
- .2 Failure to follow Turn in Requirements.
- .3 Actions that void the vehicle warranty.
- .4 Other substantial rule or procedural infractions as determined by SFM.

**4.80 Acquisition by Operation of Law**

Agencies are notified that motor vehicles acquired by operation of law are, pursuant to section 24-30-1101, C.R.S., [\(2004\)](#), "State-owned motor vehicles" and are subject to Fleet Management Program oversight.

**4.81 Forfeiture**

.1 The head of any state department, institution, or agency that comes into possession of a motor vehicle of the type described in section 24-30-1102, C.R.S. (2004) by operation of law including but not limited to seizure, confiscation, or forfeiture under sections 33-6-102, 16-13-506, C.R.S. (2004) or other law, shall report the following to SFM within 10 days of the vehicle's judicial forfeiture order or perfection of the State's right and interest in the vehicle:

- a. Location of the motor vehicle.
- b. A copy of the perfected Certificate of Title.
- c. The contact information of the responsible official within the agency.
- d. License plate number.
- e. Planned usage of the motor vehicle to include time lines.

**5.00 ~~Revocation of Assignment of State-Owned Motor Vehicles~~ Permanent Assignment of Vehicle****5.10 Permanent Assignment of Vehicle****5.11 Definition**

A permanent assignment is defined as the issuing by State Fleet Management of a motor vehicle to any state agency for a period expected to exceed twelve continuous months. A short term assignment may exceed twelve months only if approved by SFM in advance.

**5.2010 Restrictions on Assignment of Vehicles****.1 Favoritism**

Requests for assignment or reassignment of motor vehicles shall not be honored when the purpose of the assignment or reassignment is to provide a newer or lower mileage vehicle to a state officer or employee on the basis of rank, position, management authority, length of service, or other nonessential purpose.

**.2 Number of Vehicles**

Requests for additional vehicles will not be honored unless the request is based on documentation as specified and required by SFM that demonstrates the expanded need.

**5.3020 Basis for Revocation**

Revocation of assignment may occur when it has been reasonably determined by the State Fleet Manager that:

**.1 Unofficial Use**

The vehicle has been used for purposes other than official state business;

**.2 Failure to File Reports**

An agency fails to submit required reports or when the required reports that have been filed fail to meet the established standards as published by the Division, and such deficiencies are not cured within thirty calendar days after receiving notification from State Fleet Management of such deficiency;\_

Department of Personnel & Administration

---

**.3 False Information**

False information has knowingly and willfully been supplied on an application for permanent assignment, commuting reimbursement form, or other required report or form;

**.4 Required Signature**

An individual required to do so fails to sign all reports or forms submitted for vehicles permanently assigned and fails to cure the deficiency within thirty calendar days after receiving notification from State Fleet Management of such deficiency;

**.5 Abuse**

A State-owned motor vehicle has been abused;

**.6 Violation of Other Rules**

A violation of other rules or regulations promulgated by the ~~Division~~ Department has occurred which warrants revocation of assignment as specified in those rules and regulations.

**.7 Low Mileage Utilization**

Failure of vehicles to meet the minimum annual mileage utilization criteria based on the appropriate utilization classification.

**5.40 Procedure for Revocation of Assignment****4.30 Notice of Suspected Violation**

If the Director of the ~~Division~~ Division of Central Services within which State Fleet Management resides determines that there is sufficient cause for revocation, a written notice will be sent to the affected agency. The notice will identify the vehicle involved, outline the suspected violations which are considered causes for revocation, and request the affected agency to correct the situation within 30 calendar days.

**5.41 Revocation**

If, within 30 calendar days, the using operating agency fails to correct the conditions outlined in the written notice, the Director of the ~~Division of Central Services within which State Fleet Management resides~~, will notify the affected agency that the assignment of the vehicle is being revoked. If so notified, the affected agency will immediately return the vehicle to State Fleet Management. Revocation of the vehicle may not nullify applicable assigned charges associated with ownership of the vehicle. Every reasonable effort will be made to locate the proper reassignment for the vehicle.

**5.50 Appeals**

If the affected agency feels that revocation is unwarranted, the executive director, University or College President, or designee of such agency may appeal the decision ~~of the Director of the Division of Central Services~~ to the Executive Director, Department of Personnel & Administration, who will respond in writing with a decision within 30 calendar days. This decision will be binding and final.

**5.60 Reassignment of Revoked Vehicle****5.50 New Vehicle Request**

Requests for reassignment of a vehicle, following the revocation of assignment, shall not be honored until State Fleet Management is reasonably assured through formal documentation that the violation for which a vehicle was previously revoked will not recur. If the revoked vehicle has been reassigned to another agency, then the vehicle slot must be formally requested through the vehicle request process.

**6.00 Annual Verification of Minimum MileageUtilization****6.10 Utilization Criteria****.1 Minimum Annual MileageUtilization**

A state-owned motor vehicle shall not be permanently assigned to any agency, state officer, or state employee if the vehicle is not likely to meet the minimum required mileage-utilization for the utilization classification associated with the vehicle's intended work function.

**6.20 Reporting Requirements****.2 Utilization Reports**

Following the close of each fiscal year (using June 30 data), State Fleet Management will prepare and distribute, to each state agency, a listing of vehicles that have not met the required annual mileage-utilization for the appropriate utilization classification. Vehicles that have not been in their present use assignment long enough to establish a utilization pattern will not be included in the report.

**6.10 Low MileageUtilization**

- .1 For each and every state-owned motor vehicle that does not meet the minimum mileage-use for the designated utilization classification, the using-operating agency shall furnish State Fleet Management with justification for continued retention of the vehicle.
- .2 If the responsible state agency cannot reasonably justify such lower mileageutilization, permanent assignment may be revoked immediately.
- .3 The following may be considered as justification for low mileageutilization:
  - a. Partial year classification to a higher or lower utilization code.
  - b. Errors - Coding or mileage reporting error that can be validated through documentation.
  - c. Economics - Low mileage-utilization, but more cost effective than alternatives.
  - d. Disposal Pending - Vehicle will not remain on inventory records for more than six months.
  - e. Vehicle Not Available – Vehicle could not be driven for extended period due to driver illness or due to very lengthy repair time.
  - f. Other Unique Situations – SFM will work with the MVAC to evaluate unique situations on a case-by-case basis.

**7.0 Opting Out of the State Fleet Program (Higher Education)**

An institution of higher education may withdraw from the State Fleet Management (SFM) Program by meeting the following requirements:

- .1 The head of the institution must notify the Executive Director of the Department of Personnel & Administration in writing of the institution's wish to withdraw at least six months prior to the end of the current fiscal year.

Department of Personnel & Administration

---

- .2 The institution must complete all of the necessary transition requirements established by State Fleet Management so that the effective date of withdrawal from the Program may take place on July 1 of the following fiscal year.

---

**Editor's Notes****History**

~~Section 20.00 eff. 12/01/2007.~~

~~Section 3.00 eff. 03/31/2011.~~

~~Section 3.00 eff. 11/30/2011.~~

~~Preamble, section 1.10.01 eff. 10/30/2015. Sections 20.00-20.30 repealed eff. 10/30/2015.~~





**COLORADO**

**Executive Director's Office**

Department of Personnel  
& Administration

1525 Sherman St.  
Denver, CO 80203

## **PROPOSED STATEMENT OF BASIS AND PURPOSE**

The Division of Central Services Fleet Rules (“Rules”) subject to this rulemaking are found at 1 CCR 103-1. A rulemaking hearing of the Executive Director was held on December 4, 2018, at 1525 Sherman Street, Room 104, Denver, Colorado 80203. The rulemaking hearing was held by a Hearing Officer in order to facilitate the submission of public comments on the adoption of rules 1 CCR 103-1. The Executive Director is exercising her rulemaking authority as granted under one or more of the following: §24-30-1101(10(a)), §24-30-1104(1), §24-30-1112-1113, §24-30-1115, C.R.S., and HB17-1296.

The Notice of Rulemaking was issued October 29, 2018, for publication by the Secretary of State on November 10, 2018. The proposed rules and the proposed statement of basis and purpose have been available for review at the Executive Director’s office and on the Executive Director’s website since October 29, 2018. The proposed rules and the proposed statement of basis and purpose also have been available for review at the Central Services office and on the Central Services website since October 29, 2018. The Hearing Officer took testimony at the public rulemaking hearing on December 4, 2018. The Hearing Officer completed deliberations on the proposed rules on or about December 7, 2018. The rules were accepted through formal public hearing and approved by the Attorney General.

The general purpose of the Executive Director in conducting the rulemaking was to provide, with regards to the administration of Central Services, for the following:

- (a) Change references of the rule authority from the Division of Central Services to the Department of Personnel & Administration;
- (b) Clarify contemporary practices found in Rules 1 CCR 103-1, regarding issuance of waiver requests;
- (c) Modify Chapter 2 regarding handling of various fleet vehicle citations, tolls, tickets, parking fees, and taxable commuting ;
- (d) Repeal the majority of Chapter 3 regarding taxability of commuter vehicles and refer to the Office of State Controller’s guidance on taxable commuting;
- (e) Modify Chapters 4, 5, and 6 regarding vehicle acquisition, operation, branding and logos, accidents, reporting, restrictions , revocation, and utilization; and
- (f) Update rule numbering to comport with the newly promulgated rules.

The Hearing Officer finds, as required by §24-4-103(4)(b), C.R.S. that the record of the rulemaking proceeding demonstrates the need for the rules; the proper constitutional and statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

The specific authority of the Executive Director to promulgate these rules is found at one or more of the following: §24-30-1101(10(a), §24-30-1104(1), §24-30-1112-1113, §24-30-1115, C.R.S., and HB17-1296.

The permanent rules, if adopted by December 7, 2018, shall become effective February 1, 2019.

Dated this 29<sup>th</sup> day of October, 2018.

---

June Taylor  
Executive Director  
Department of Personnel & Administration

# Notice of Proposed Rulemaking

**Tracking number**

2018-00593

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-1

**Rule title**

PROCEDURE AND ADMINISTRATION

**Rulemaking Hearing****Date**

12/03/2018

**Time**

01:30 PM

**Location**

1375 Sherman Street, Room 127, Denver, CO 80203

**Subjects and issues involved**

The Department is proposing to remove the definition of legal holiday in the Date Document or Payment Considered Made regulation.

**Statutory authority**

§ 39-21-112(1), § 39-21-119, § 39-21-120, § 39-27-117, § 38-28.5-106, § 39-28.8-201, and § 39-28.8-202, C.R.S.

**Contact information****Name**

Erika Hoxeng

**Title**

Tax Policy Analyst

**Telephone**

3038664805

**Email**

erika.hoxeng@state.co.us

## DEPARTMENT OF REVENUE

### Taxpayer Service Division - Tax Group

#### PROCEDURE AND ADMINISTRATION

##### 1 CCR 201-1

---

#### **Regulation~~ule~~ 39-21-119. Date Document or Payment Considered Made.**

The statutory bases for this ~~rule~~-regulation are § 39-21-112(1), § 39-21-119, § 39-21-120, § 39-27-117, § 38-28.5-106, § 39-28.8-201, and § 39-28.8-202, C.R.S. The purpose for this ~~rule~~-regulation is to define the date Documents or Payments are considered filed with or made to the Department.

- (1) **General Rule.** A Document or Payment is considered to be filed or made on the date of the postmark displayed on the envelope or other appropriate wrapper or on the date of the Electronic Postmark for a Document or Payment made electronically.
- (2) **Definitions.**
  - (a) "Department" means the Colorado Department of Revenue.
  - (b) "Document" means any return, report, claim, statement, or other document required to be filed within a prescribed period or on or before a prescribed date that is within the scope of article 21 of title 39 as defined in § 39-21-102, C.R.S.
  - ~~(c) "Legal Holiday" means any day declared a legal holiday pursuant to § 24-11-101, C.R.S.~~
  - ~~(cd)~~ "Payment" means any payment required to be made within a prescribed period or on or before a prescribed date that is within the scope of article 21 of title 39 as defined in § 39-21-102, C.R.S.
  - ~~(de)~~ "Electronic Postmark" means:
    - (i) for Documents filed through a third party transmitter by means other than those described in paragraphs (2)(~~de~~)(ii)-(iv) of this ~~rule~~regulation, a record acknowledging the date and time that the Document was submitted to the third party transmitter so long as the Department accepts such Document. A transmitter that receives a Document for electronic filing on or before the due date of the Document must ensure that it transmits the electronic Document on or before the due date. If the taxpayer and the transmitter are located in different time zones, the taxpayer's time zone controls the timeliness of the electronically filed Document.
    - (ii) for income tax returns filed through a third party transmitter that uses the Internal Revenue Service's Federal/State e-file program, a record acknowledging the date and time the return was submitted to the third party transmitter so long as the Internal Revenue Service accepts the return. If the Internal Revenue Service rejects an electronic return and the return is corrected and accepted within the timeframe for timely filing corrected returns after rejection, the Electronic Postmark is the date the initial rejection occurred.

- (A) If a return is submitted to the third party transmitter on or before the due date of the return but is transmitted to the Internal Revenue Service after the prescribed due date, the Electronic Postmark will be considered the date submitted to the third party transmitter so long as the third party transmitter transmits the return within two days of the due date.
    - (B) If the taxpayer and the transmitter are located in different time zones, the Electronic Postmark must display the taxpayer's time zone to determine the timeliness of the electronically filed Document.
  - (iii) for Documents filed through a third party transmitter that files by secure file transfer protocol, a record of the date and time that the Document was submitted to the Department.
  - (iv) for Documents filed through the Department's online portal, a record acknowledging the date and time that the Document was submitted on the Department's online portal.
  - (v) for any form of electronic Payment, a record of the date and time that the taxpayer requested the payment be made.
- (3) **Documents or Payments Sent Electronically.** Documents and Payments sent to the Department electronically shall be considered to be filed or paid on the date shown on the Electronic Postmark for such submitted Document or Payment. Any electronic return rejected by the Department will not be considered filed unless, if applicable, it is accepted within the timeframe for timely filing corrected returns after rejection. Unless otherwise indicated in this [rule/regulation](#), a Document or Payment with an Electronic Postmark on or before 11:59 P.M. Mountain Standard Time on the due date is considered timely.
  - (a) *Payments Made by Electronic Funds Transfer.* Payments made by electronic funds transfer must be made on or before 4:00 P.M. Mountain Standard Time on the due date of the Payment in order to be treated as paid on that day. Payments made after 4:00 P.M. Mountain Standard Time are considered to be made on the following day.
- (4) **Documents or Payments Sent Manually.** Documents or Payments mailed by the United States Postal Service or any "designated delivery service" determined by the Commissioner of the Internal Revenue Service pursuant to I.R.C. § 7502(f) are considered to be filed and received by the Department on the date shown on the postmark attached to the envelope or other appropriate wrapper. The Document or Payment shall be considered timely filed or paid if received by the Department after the due date for such Document or Payment so long as the postmark displays a date on or before the applicable due date. If the postmark bears a date after the due date for such Document or Payment, such Document or Payment is delinquent.
  - (a) This rule shall apply only if the Document or Payment:
    - (i) is deposited in an envelope or other appropriate wrapper,
    - (ii) displays sufficient prepaid postage, and
    - (iii) is properly addressed to the agency, officer, or office with which the Document or Payment is required to be filed or made.
- (5) If the due date for a Document or Payment falls upon a Saturday, Sunday, or legal holiday, it shall be deemed to have been timely filed or paid if filed or paid on the next business day.

- (a) If the due date for filing or paying federal income tax is extended by virtue of Emancipation Day in the District of Columbia, the due date for the filing or paying of any corresponding Colorado income tax will be similarly extended to coincide with the federal due date.
- (6) For any Document or Payment that is submitted by the taxpayer but not received by the Department, the taxpayer bears the burden to demonstrate, by competent evidence, that the Document or Payment was timely submitted. "Competent evidence" means evidence, in addition to the testimony of the taxpayer, that is credible and sufficient to prove that the Document or Payment was actually submitted or sent on a specified date. For Documents or Payments sent by mail, the taxpayer must prove that the Document or Payment was actually deposited in the mail on a specified date before the last collection of mail from the place of deposit.

# **COLORADO DEPARTMENT OF REVENUE**

## **STATEMENT OF BASIS AND PURPOSE**

**Date Document or Payment Considered Made**

**39-21-119**

**1 CCR 201-1**

### **Basis**

The statutory bases for this regulation are § 39-21-112(1), § 39-21-119, § 39-21-120, § 39-27-117, § 38-28.5-106, § 39-28.8-201, and § 39-28.8-202, C.R.S.

### **Purpose**

The purpose for the amendment to this regulation is to remove the definition of "legal holiday".

# Notice of Proposed Rulemaking

**Tracking number**

2018-00588

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-4

**Rule title**

SALES AND USE TAX

## Rulemaking Hearing

**Date**

11/30/2018

**Time**

02:00 PM

**Location**

1313 Sherman Street, Room 220, Denver, CO 80203

**Subjects and issues involved**

The Department is proposing to amend the Retailer's Use Tax regulation to clarify the criteria that determine a retailers obligation to collect use tax and to conform the rule to the U.S. Supreme Courts decision in South Dakota v. Wayfair, Inc., 138 S. Ct. 2080 (2018).

**Statutory authority**

§§ 39-21-112(1) and 39-26-204(2), C.R.S.

## Contact information

**Name**

Josh Pens

**Title**

Director of Tax Policy Analysis

**Telephone**

303 866 3036

**Email**

josh.pens@state.co.us



DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

SALES AND USE TAX

1 CCR 201-4

---

**Retailer's Use Tax**

**Regulation ~~39-26-204~~(2). Retailer's Use Tax.**

(1) ~~Every retailer that has substantial nexus with Colorado and is doing business in this state, as defined in § 39-26-102(3), C.R.S., shall collect retailer's use tax, pursuant to § 39-26-204(2), C.R.S., with respect to any sale of tangible personal property for storage, use, or consumption in Colorado for which the retailer was not, under state and federal law, required to collect sales tax. Retailers are considered to have a substantial nexus with Colorado for sales tax purposes if they meet any of the following criteria:~~

(a) ~~the retailer maintains a physical presence in Colorado pursuant to §§ 39-26-102(3)(a), (d), and (e), C.R.S.; or~~

(b) ~~in the previous calendar year or the current calendar year:~~

(I) ~~the retailer's gross revenue from the sale of tangible personal property or services delivered into Colorado exceeds one hundred thousand dollars; or~~

(II) ~~the retailer sold tangible personal property or services for delivery into Colorado in two hundred or more separate transactions.~~

(2) ~~Paragraph (1)(b) of this rule shall not apply in determining a retailer's obligation to collect tax under § 39-26-204(2), C.R.S. and this rule for any sale made prior to December 1, 2018.~~

(3) ~~A retailer that has substantial nexus with Colorado as defined in paragraph (1) of this rule is not a "remote seller" as defined in § 39-26-102(7.7), C.R.S. and sales made by any such retailers are not "remote sales" as defined in § 39-26-102(7.6), C.R.S.~~

~~Effective January 1, 1999, all entries on the retailer's use tax return must be rounded to the nearest dollar. Amounts less than fifty cents must be rounded down to zero cents and amounts from fifty to ninety-nine must be rounded to the nearest dollar. Rounding is required on the tax return only; books, records, invoices and other retailer's use tax documents must reflect actual tax amounts.~~

~~**Any out-of-state retailer who is engaged in selling at retail and who does not maintain a location in this state, as specified in C.R.S. 39-26-102 (3)(a), shall impose, collect, and remit to the department, a "Retailer's Use Tax" on such sales, instead of collecting the retail sales tax provided in Part 1 of the Act. Such retailer, upon application, shall be issued a "Retailer's Use Tax License" which is issued without charge.**~~

~~Every outstate retailer who is doing business in this state is required to collect retailer's use tax from the purchaser regardless of whether title to the goods passes within or without this state, if the sale of tangible personal property is subject to taxation due to the storage, use or consumption of that property within this state.~~

~~All sales subject to the retailer's use tax must be reported on the forms supplied by this department, "Retailer's Use Tax Return", subject to the provisions of Part 1 of this Act.~~

~~Any retailer collecting sales or use tax thereby becomes a trustee for any such tax collected and is responsible as an agent of the State of Colorado.~~

# **COLORADO DEPARTMENT OF REVENUE STATEMENT OF BASIS AND PURPOSE**

**Retailer's Use Tax  
39-26-204.2  
1 CCR 201-4**

## **Basis**

The statutory bases for this regulation are §§ 39-21-112(1) and 39-26-204(2), C.R.S.

## **Purpose**

The purpose of the amendment is to clarify the criteria that determine a retailer's obligation to collect use tax and to conform the regulation to the U.S. Supreme Court's decision in *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018).

# Notice of Proposed Rulemaking

**Tracking number**

2018-00587

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-4

**Rule title**

SALES AND USE TAX

## Rulemaking Hearing

**Date**

11/30/2018

**Time**

02:00 PM

**Location**

1313 Sherman Street, Room 220, Denver, CO 80203

**Subjects and issues involved**

The Department is proposing to repeal the Tax Rate regulation to conform to proposed Regulation 39-26-102(9) regarding the sourcing of sales.

**Statutory authority**

§§ 39-21-112(1) and 39-26-105, 106, and 107, C.R.S.

## Contact information

**Name**

Josh Pens

**Title**

Director of Tax Policy Analysis

**Telephone**

303 866 3036

**Email**

josh.pens@state.co.us

## DEPARTMENT OF REVENUE

### Taxpayer Service Division – Tax Group

#### SALES AND USE TAX

#### 1 CCR 201-4

---

#### **Regulation 39-26-105(1)(A) — TAX RATE**

- (1) **General Rule.** A retailer shall collect the state sales tax and any applicable state-administered local sales taxes in effect at the time of the sale. If the retailer's filing period does not end on the day preceding the effective date of a new tax rate, the retailer must compute the amount of sales tax on its sales tax return using both tax rates.
- (a) **Leases and Credit Sales.** Retailers who enter into leases or credit sales subject to Colorado sales or use taxes must collect for each such payment the tax at the rate in effect when the credit sale or lease was first made.
- (i) Retailers who receive payments for a lease or credit sale after the effective date of a change in the tax rate must continue to collect the tax at the original rate. If the tax rate decreases and the retailer collects tax at the old rate on payments made after the effective date of the new tax rate, the retailer must report on their sales tax return the difference between the old tax rate and the new tax rate on the "Excess tax collected" line that is applicable to the tax jurisdiction whose tax rate has changed. Retailers cannot distribute the excess tax to the reporting columns of tax jurisdictions whose rate has not changed. If the tax rate increases and the retailer collects tax at the old rate on payments made after the effective date of the new tax rate, the retailer should contact the Department for instructions on filing the return.
- (A) Retailers who renew or extend a lease must collect on each subsequent payment the tax rate in effect on the effective date of such renewal or extension.
- (b) **Deferred Transactions.** Retailers who have conditional sales contracts or who remit tax on a cash basis for sales that occurred before a change in the tax rate must continue to collect the tax related to all payments made after the effective date of the new tax rate at the rate in effect at the time the contract or sale was originally made.

# **COLORADO DEPARTMENT OF REVENUE STATEMENT OF BASIS AND PURPOSE**

**Tax Rate**  
**39-26-105(1)(A)**  
**1 CCR 201-4**

## **Basis**

The bases for this regulation are §§ 39-21-112(1) and 39-26-105, 106, and 107, C.R.S.

## **Purpose**

The purpose of the amendment is to conform the regulation to changes made to proposed Regulation 39-26-102(9) regarding the sourcing of sales.

# Notice of Proposed Rulemaking

**Tracking number**

2018-00586

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-4

**Rule title**

SALES AND USE TAX

**Rulemaking Hearing****Date**

11/30/2018

**Time**

02:00 PM

**Location**

1313 Sherman Street, Room 220, Denver, CO 80203

**Subjects and issues involved**

The Department is proposing to amend the Remittance of Sales Tax regulation to clarify the criteria that determine a retailers liability and responsibility to collect sales tax and to conform the rule to the U.S. Supreme Courts decision in South Dakota v. Wayfair, Inc., 138 S. Ct. 2080 (2018).

**Statutory authority**

§§ 39-21-112(1) and 119, C.R.S. and §§ 39-26-105, 107, 109, 112, 118, and 704(2), C.R.S.

**Contact information****Name**

Josh Pens

**Title**

Director of Tax Policy Analysis

**Telephone**

303 866 3036

**Email**

josh.pens@state.co.us

## DEPARTMENT OF REVENUE

### Taxpayer Service Division – Tax Group

#### SALES AND USE TAX

#### 1 CCR 201-4

---

#### **Rule-Regulation 39-26-105. Remittance of Sales Tax.**

**Basis and Purpose.** The statutory bases for this rule are §§ 39-21-112(1) and ~~39-21-119, C.R.S. and §§ 39-26-105, 39-26-107, 39-26-109, 39-26-112, and 39-26-118, and 39-26-704(2),~~ C.R.S. The purpose of this rule is to clarify sales tax remittance requirements and conditions under which a retailer is eligible to deduct a retailer's service fee from the sales tax they remit.

(1) **Retailer Requirements.**

- (a) A retailer is liable and responsible for tax on the retailer's taxable sales made during the tax period prescribed for the retailer pursuant to 1 CCR 201-4, Rule 39-26-109, calculated using the tax rate in effect at the time of the sale and applied to all taxable sales, including all taxable sales made for less than the minimum amount subject to tax pursuant to § 39-26-106, C.R.S. A retailer is also liable and responsible, pursuant to § 39-26-112, C.R.S., for the payment of any tax collected in excess of the tax rate in effect at the time of the sale and must remit such excess amount to the Department.
- (b) A retailer shall file with the Department a return reporting its sales, including any sales exempt from taxation under article 26 of title 39, C.R.S., made during the preceding tax period. If a retailer makes no retail sales during its preceding tax period, the retailer must file a return reporting zero sales. Returns and any required supplemental forms must be completed in full.
- (c) A retailer must file returns and remit any tax due to the Department in accordance with the filing schedules prescribed by 1 CCR 201-4, Rule 39-26-109.

(2) **Due Date of Returns.** Sales tax returns and payments of tax reported thereon are due the twentieth day of the month following the close of the tax period. If the twentieth day of the month following the close of the tax period is a Saturday, Sunday, or legal holiday, the due date shall be the next business day.

(3) **Retailer's Service Fee.** Except as provided in this paragraph (3), a retailer may, in the remittance of collected sales tax, deduct and retain a retailer's service fee in the amount prescribed by § 39-26-105(1)(c), C.R.S.

- (a) If the retailer is delinquent in remitting any portion of the tax due, other than in unusual circumstances shown to the satisfaction of the executive director, the retailer shall not retain a retailer's service fee for any portion of the tax for which the retailer is delinquent.
- (b) If a retailer has retained a retailer's service fee pursuant to paragraph (3) of this rule and, subsequent to the applicable due date, owes additional tax for the filing period as the result of an amended return or an adjustment made by the Department, the retailer shall not be permitted to retain a retailer's service fee with respect to the additional tax, but the



retailer may retain the retailer's service fee associated with the original return, so long as the retailer filed the original return in good faith.

**(4) Application.**

(a) The liability and responsibility imposed by § 39-26-105, C.R.S. and this rule apply to any retailer that has substantial nexus with Colorado and is doing business in this state, as defined in § 39-26-102(3), C.R.S. Retailers are considered to have a substantial nexus with Colorado for sales tax purposes if they meet any of the following criteria:

(I) the retailer maintains a physical presence in Colorado pursuant to §§ 39-26-102(3)(a), (d), and (e), C.R.S.; or

(II) in the previous calendar year or the current calendar year:

(A) the retailer's gross revenue from the sale of tangible personal property or services delivered into Colorado exceeds one hundred thousand dollars; or

(B) the retailer sold tangible personal property or services for delivery into Colorado in two hundred or more separate transactions.

(b) Paragraph (4)(a)(II) of this rule shall not apply in determining a retailer's liability and responsibility for tax pursuant to § 39-26-105, C.R.S. and this rule for any sale made prior to December 1, 2018.

(c) A retailer that has substantial nexus with Colorado as defined in paragraph (4)(a) of this rule is not a "remote seller" as defined in § 39-26-102(7.7), C.R.S. and sales made by any such retailers are not "remote sales" as defined in § 39-26-102(7.6), C.R.S.

**Cross Reference(s):**

1. Forms, returns, and instructions can be found online at [www.colorado.gov/tax](http://www.colorado.gov/tax).
2. For additional information about excess tax collected by a retailer, see § 39-26-112, C.R.S. and Rule 39-26-106, 1 CCR 201-4.
3. For information about electronic funds transfer (EFT) requirements and the timeliness of payments made via EFT, see Special Rule 1 Electronic Funds Transfer, 1 CCR 201-1.
4. For information about dates payments or returns are deemed to have been made, see § 39-21-119, C.R.S. and Rule 39-21-119, 1 CCR 201-1.
5. For information about electronic filing, see § 39-21-120, C.R.S. and Rule 39-21-120, 1 CCR 201-1.

# **COLORADO DEPARTMENT OF REVENUE STATEMENT OF BASIS AND PURPOSE**

**Remittance of Tax  
39-26-105  
1 CCR 201-4**

## **Basis**

The statutory bases for this regulation are §§ 39-21-112(1) and 119, C.R.S. and §§ 39-26-105, 107, 109, 112, 118, and 704(2), C.R.S.

## **Purpose**

The purpose of the amendment is to clarify the criteria that determine a retailer's liability and responsibility to collect sales tax and to conform the regulation to the U.S. Supreme Court's decision in *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018).

# Notice of Proposed Rulemaking

**Tracking number**

2018-00582

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-4

**Rule title**

SALES AND USE TAX

**Rulemaking Hearing****Date**

11/30/2018

**Time**

02:00 PM

**Location**

1313 Sherman Street, Room 220, Denver, CO 80203

**Subjects and issues involved**

The Department is proposing to repeal the Doing Business in This State regulation in accordance with changes made to proposed Regulations 39-26-105 and 39-26-204(2), 1 CCR 201-4 regarding the criteria that determine a retailers liability and responsibility to collect sales and use tax

**Statutory authority**

§§ 39-21-112(1) and 39-26-102(3), C.R.S.

**Contact information****Name**

Josh Pens

**Title**

Director of Tax Policy Analysis

**Telephone**

303 866 3036

**Email**

josh.pens@state.co.us

## DEPARTMENT OF REVENUE

### Taxpayer Service Division – Tax Group

## SALES AND USE TAX

### 1 CCR 201-4

---

#### **REGULATION 39-26-102.3**

- 1) ~~“Doing business in this state” under C.R.S. 39-26-102(3)(a) requires that the person both (1) sell, lease, or deliver tangible personal property in this state, and (2) maintain, directly or indirectly, an office, salesroom, warehouse, or similar place of business within the state. A person meeting these requirements must obtain a Colorado Sales Tax License. “Doing business in this state” under C.R.S. 39-26-102(3)(b) requires that the person both (1) sell, lease, or deliver tangible personal property in this state, and (2) regularly or systematically make solicitations in this state. A person meeting these requirements should obtain a Colorado Retailer’s Use Tax License or a Colorado Sales Tax License.~~
- 2) ~~The solicitation required by (3)(b)(i) of section 39-26-102 C.R.S. may be by any means whatsoever, including advertising by catalogues, newspapers, radio, television, e-mail, or Internet. The solicitation need not originate in this state. It is sufficient that the vendor purposefully direct the advertising into the state, which includes national or international advertising that includes Colorado.~~
- 3)
  - a) ~~Any retailer that does not collect Colorado tax (the “remote retailer”) and is a component member of a controlled group of corporations, which controlled group also contains a retailer with a physical presence in this state (the “in-state retailer”), is presumed to be doing business in the state at a level sufficient to require the collection of Colorado sales tax. The remote retailer is required to register with the department and is required to collect Colorado sales tax.~~
  - b) ~~The presumption articulated in a) may be rebutted by the remote retailer by a showing that the in-state retailer did not engage in any constitutionally sufficient solicitation on behalf of the remote retailer.~~
  - c) ~~A retailer that does not collect Colorado tax is a retailer that sells taxable property or services to customers who are not exempt from sales tax, but does not collect sales or use tax.~~
  - d) ~~In-state retailer includes any member of the controlled group of corporations that has a controlling interest in any in-state retailer regardless of the form of doing business of the in-state retailer.~~

# **COLORADO DEPARTMENT OF REVENUE STATEMENT OF BASIS AND PURPOSE**

## **Doing Business in This State**

**39-26-102.3**

**1 CCR 201-4**

### **Basis**

The bases for this rule are §§ 39-21-112(1) and 39-26-102(3), C.R.S.

### **Purpose**

The purpose of the amendment is to repeal the rule in accordance with changes made to proposed Regulations 39-26-105 and 39-26-204(2), 1 CCR 201-4 regarding the criteria that determine a retailer's liability and responsibility to collect sales and use tax.

# Notice of Proposed Rulemaking

**Tracking number**

2018-00585

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-4

**Rule title**

SALES AND USE TAX

## Rulemaking Hearing

**Date**

11/30/2018

**Time**

02:00 PM

**Location**

1313 Sherman Street, Room 220, Denver, CO 80203

**Subjects and issues involved**

The Department is proposing to amend the Exchanged Tangible Personal Property regulation to conform the rule to changes made to proposed Regulation 39-26-102(9) regarding the sourcing of sales.

**Statutory authority**

§§ 39-21-112(1) and 39-26-104(1)(b)(I), C.R.S.

## Contact information

**Name**

Josh Pens

**Title**

Director of Tax Policy Analysis

**Telephone**

303 866 3036

**Email**

josh.pens@state.co.us

DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

SALES AND USE TAX

1 CCR 201-4

---

**Regulation 39-26-104(1)(bB)(i). ~~Exchanged~~XCHANGED T~~angible~~ANGIBLE P~~ersonal~~ERSONAL PropertyROPERTY.**

- (1) **General Rule.** When tangible personal property is received by a retailer as part or full payment for the sale of tangible personal property, sales tax shall be calculated upon the purchase price of the tangible personal property sold, minus the fair market value of the tangible personal property exchanged by the purchaser, provided the property taken by the retailer in the exchange is to be resold in the usual course of the retailer's trade or business. ~~The general rule applies to exchanges that occur both inside and outside Colorado (e.g., motor vehicles exchanged in another state and one or both cars are subsequently registered in Colorado).~~
- (2) **Exceptions.** The general rule does not apply if:
- (a) The property transferred from purchaser, or by a third party on behalf of the purchaser, to seller is not tangible personal property.
    - (i) *Examples.*
      - (A) Intangible property, such as stock certificates, and real property are not subject to sales or use tax.
      - (B) Services (because they are not property).
  - (b) Retailer does not resell, in the usual course of its business, the property transferred from purchaser.
    - (i) *Examples.*
      - (A) Retailer does not resell the property in a commercially reasonable period.
      - (B) Retailer takes a used computer from buyer in exchange for the sale of a new computer to buyer. Retailer then donates the used computer to a school. A donation does not constitute a sale and, therefore, the initial exchange does not qualify under the general rule.
      - (C) Retailer is in the business of selling only construction equipment. Buyer exchanges a boat as partial payment of its purchase of a large compressor. Retailer cannot reduce the price on which sales tax is calculated for the compressor by the fair market value of the boat even if the seller resells the boat. The resale of boats is not part of the retailer's usual course of business. Retailer and buyer also do not qualify for the vehicle exchange, even though the boat qualifies as a vehicle, because both the buyer and retailer must exchange vehicles. Therefore, both the retailer, as a licensed vendor, and buyer are liable for the sales tax on

the purchase of the equipment and the retailer, as a buyer, is liable for sales tax on the fair market value of the boat (buyer would also be liable for the sales tax on the boat if buyer is a licensed retailer).

- (ii) *Exception to the Resale Requirement - Vehicles.* The resale requirement does not apply if the property transferred (exchanged) by the seller to buyer is a vehicle and the property transferred (exchanged) by the buyer to the seller is a vehicle. Both vehicles must be subject to licensing, registration, or certification by the laws of Colorado. "Vehicles" include:

- (A) Trailers, semi-trailers, trailer coach,
- (B) Special mobile machinery (except such machinery used solely on property of the owner),
- (C) Vehicles designed primarily to be operated or drawn on public highways, (§§ 42-3-103(1) and 104, C.R.S.),
- (D) Watercraft (§ 33-13-103, C.R.S.),
- (E) Aircraft (Colorado does not license aircraft but Colorado law requires aircraft possessed in this state be licensed by FAA) (§ 43-10-114(1), C.R.S.).

Purchaser, on whom the obligation to pay sales tax is levied, is the person who pays money or other consideration in addition to the exchanged vehicle. If the seller is a licensed retailer, then the retailer must collect sales tax from the purchaser. Persons who engage in three or more such exchanges may be required to obtain a motor vehicle dealer's license

- (c) Exchanges that do not occur at the same time and place. See, § 39-26-104(1)(b).

- (i) *Examples.*

- (A) Motor vehicle dealer sells a motor vehicle to buyer, who pays cash. Two weeks later, buyer decides to sell another vehicle he owns to the dealer. Buyer cannot claim a refund for taxes paid for the first purchase because the second vehicle was not exchanged as part of the first sale.
- (B) Retailer is in the business of leasing equipment. Customer rents a forklift for 30 days and retailer and customer agree at the time the lease is signed that customer will give retailer, as part of the payment, a used compressor that retailer intends to lease to third parties. The exchange does not qualify because the use of the forklift occurs over thirty days and does not occur at the same time and place as the exchange of the compressor. In contrast, a finance lease is treated as a credit sale and not as a true lease. An exchange involving a finance lease is treated as occurring at the same time and place as the other party's exchange of property.

Cross Reference(s):

- 1. For additional requirements regarding the collection of tax for motor vehicles, see § 39-26-113, C.R.S.



- | 2. See, § 39-26-104(1)(b)(I)(B), C.R.S. and § 12-6-101, et seq., C.R.S. for laws governing motor vehicle dealer licensing.

# **COLORADO DEPARTMENT OF REVENUE STATEMENT OF BASIS AND PURPOSE**

## **Exchanged Tangible Personal Property 39-26-104(1)(b)(I) 1 CCR 201-4**

### **Basis**

The bases for this regulation are §§ 39-21-112(1) and 39-26-104(1)(b)(I), C.R.S.

### **Purpose**

The purpose of the amendment is to conform the regulation to changes made to proposed Regulation 39-26-102(9) regarding the sourcing of sales.

# Notice of Proposed Rulemaking

**Tracking number**

2018-00584

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-4

**Rule title**

SALES AND USE TAX

## Rulemaking Hearing

**Date**

11/30/2018

**Time**

02:00 PM

**Location**

1313 Sherman Street, Room 220, Denver, CO 80203

**Subjects and issues involved**

The Department is proposing to amend the Direct Payment Permit regulation to conform the regulation to changes made to proposed Regulation 39-26-102(9) regarding the sourcing of sales.

**Statutory authority**

§§ 39-21-112(1); 39-26-102(8), 39-26-102(9), and 39-26-102(10); and 39-26-103.5, C.R.S.

## Contact information

**Name**

Josh Pens

**Title**

Director of Tax Policy Analysis

**Telephone**

303 866 3036

**Email**

josh.pens@state.co.us

## DEPARTMENT OF REVENUE

### Taxpayer Service Division – Tax Group

#### SALES AND USE TAX

##### 1 CCR 201-4

---

#### Regulation 39-26-103.5. Direct Payment Permit~~DIRECT PAYMENT PERMIT.~~

- (1) **General Rule.** A purchaser who holds a direct payment permit ("Qualified Purchaser") shall remit sales and use taxes directly to the Colorado Department of Revenue ("Department") and not to the retailer. Retailers who sell taxable goods or services to a Qualified Purchaser shall not collect sales tax from such purchasers.
- (2) **Qualified Purchaser Qualifications.** An applicant, which can be an entity or individual, for a direct payment permit must meet the following conditions.
  - (a) *Dollar Threshold.* An applicant must have had a minimum of \$7,000,000 in purchases on which Colorado state sales or use tax was owed during the twelve months preceding the application. The dollar threshold excludes purchases that are exempt from Colorado state sales and use tax, even if such purchases are subject to state-administered local sales or use taxes. See, §29-2-105, C.R.S. for a description of the local tax base. For example, the dollar threshold excludes exempt wholesale purchases of inventory. Additionally, commodities or tangible personal property that are to be erected upon or affixed to real property, such as building and construction materials and fixtures, are not included in the dollar threshold. See, §39-26-103.5(1)(a), C.R.S.
  - (b) *Good Standing.* If an applicant has been subject to any tax administered by the Department for at least three years prior to the date of the application, an applicant cannot have been delinquent in collecting, remitting, or reporting any sales, use, income, or other tax administered by the Department for the immediate three years prior to the date applicant submits its application. If an applicant has not been subject to any tax administered by the Department for at least three years, the applicant cannot have been delinquent in collecting, remitting, or reporting taxes for any period after the date the applicant was first obligated to collect, remit, and report such taxes. The Department can waive this requirement if an applicant demonstrates to the satisfaction of the director or their designee that the failure to comply with the collecting, remitting, and reporting requirements was due to reasonable cause. In determining whether reasonable cause exists, the Department will consider, among other relevant aggravating and mitigating factors, whether:
    - (i) the failure was due to willful or reckless disregard of applicant's tax obligations;
    - (ii) the applicant failed to comply on more than one occasion;
    - (iii) the magnitude of the failure was significant in terms of dollars or time; and
    - (iv) the applicant made subsequent efforts to avoid future failures.
  - (c) *Accounting Systems and Practices.* An applicant must have in place an accounting system and set of practices that are acceptable to the Department. The accounting

system and practices must fully and accurately report the amount of sales or use tax to be reported on the appropriate sales or use tax return(s), including state-administered local tax jurisdictions. The Department may revoke a direct payment permit and may make assessments of tax, penalties, or interest if such system or practices are not adequate to enable the Department to fully and accurately collect and allocate to cities, counties, and other local taxing entities all the sales and use taxes that the Department collects on behalf of such entities.

- (d) A Qualified Purchaser is not required to be subject to the collection, remittance, and reporting requirements for sales taxes in order to obtain such a permit. Rather, a Qualified Purchaser can be subject to the collection, remittance, and reporting requirements for any tax administered by the Department.
- (3) **Effective Date.** A direct payment permit is effective from the date of issuance until December 31 of the third year following the year in which it is issued unless sooner revoked.
- (4) **Purchaser's Funds.** When a Qualified Purchaser uses a direct payment permit, the Qualified Purchaser must use its own funds when paying a retailer for a transaction to which the direct payment permit applies. Retailers cannot accept payment from persons other than the Qualified Purchaser, including payment from the personal funds of an individual if the permit is held in the name of an entity. Retailers must collect tax if a Qualified Purchaser is making a purchase with funds other than the Qualified Purchaser's funds and will be liable for unpaid taxes for transactions paid in contravention of this subsection (4).
- (5) **Revocation of Permits.**
  - (a) The Department may revoke a direct payment permit if the Qualified Purchaser violates any statute or rule governing the administration of sales and use taxes, or if in the opinion of the Department the Qualified Purchaser becomes otherwise unable to meet any of the conditions for holding a direct payment permit. The Department shall provide written notice of the revocation by first-class mail to the last known address of the Qualified Purchaser thirty days prior to the effective date of such revocation. The notice of revocation shall set forth:
    - (i) the factual and legal basis for revocation,
    - (ii) advise the Qualified Purchaser of its right to appeal, and
    - (iii) the date the Department issued the notice.
  - The Department will issue a denial of a direct payment permit application in the same manner.
  - (b) An applicant who is denied a permit or a Qualified Purchaser whose permit was revoked, may appeal the decision by submitting to the Department's executive director a written request for hearing. The notice of appeal must be received by the Department within thirty days of the date of issuance of the notice of revocation or denial and contain the permit holder's name, address, permit account number (for revocations), and the legal and factual basis explaining why the permit should not be revoked or denied. Qualified Purchaser's notice of appeal shall suspend the effective date of the revocation until a final order resolving the appeal is issued by the executive director or the director's designee. The executive director or director's designee shall conduct a hearing and issue a final ruling on such appeal within a reasonable time.
- (6) **Reporting Requirements.**

- (a) A Qualified Purchaser holding a direct payment permit must directly remit to the Department all state and state-administered city, county and special district sales taxes that would have been collected by the retailer had the Qualified Purchaser purchased such goods or services without a direct payment permit.
- (i) *Exceptions.* A Qualified Purchaser holding a direct payment permit cannot pay county lodging taxes, county short-term rental taxes, and local marketing district taxes directly to the Department because such taxes are not sales taxes. Retailer must collect such taxes from the Qualified Purchaser and remit them to the Department. See, §30-11-107.5 and §30-11-107.7, C.R.S.
- (b) A Qualified Purchaser must report and remit state and state-administered local taxes on or before the 20th day of each month following the month the Qualified Purchaser purchases taxable goods or services with a direct payment permit.
- (c) The vendor must retain a copy of Qualified Purchaser's direct pay permit.

~~(7) — Determining Local Sales Taxes.~~

- ~~(a) — Service fees. With regard to sales taxes only, a Qualified Purchaser may deduct from its remittance to the Department the service fee for state sales tax and any local service fee(s).~~
- ~~(b) — A sale occurs when and where a Qualified Purchaser takes title or possession of the good(s) or where a taxable service is performed.~~
- ~~(c) — If the Qualified Purchaser takes title or delivery of any taxable good(s) within the State of Colorado, then the Qualified Purchaser shall remit the state-administered local sales taxes for the local jurisdiction(s) in which the Qualified Purchaser took the title or delivery.~~
- ~~(d) — If the Qualified Purchaser takes title or delivery of any taxable good(s) outside the State of Colorado, then the Qualified Purchaser shall remit use tax for the location where the Qualified Purchaser first uses, stores, or consumes the goods.~~
- ~~(e) — Sales and use taxes of home rule cities and counties cannot be paid by direct payment permit to the Department, unless the Department has agreed to collect such taxes.~~
- ~~(f) — Examples.~~
  - ~~(i) — Qualified Purchaser takes delivery of goods at seller's store which is located in the City and County of Denver, Regional Transportation District (RTD) and Scientific and Cultural Facilities District (CD). Qualified Purchaser remits state sales tax and RTD/CD sales taxes to the Department because purchaser took possession in these state-administered local tax jurisdictions. Qualified Purchaser does not remit the City and County of Denver sales taxes to the Department because Denver is a home rule city and county and the Department does not administer their local taxes.~~
  - ~~(ii) — Seller, who is located in Arapahoe County and in RTD/CD special districts, ships goods with its own vehicle, or engages a common carrier (e.g., United States Postal Service, UPS, or other common carrier), to Qualified Purchaser which is located in that portion of El Paso County that also includes the Pikes Peak Rural Transportation Authority. Qualified Purchaser does not remit Arapahoe County or RTD/CD special districts sales taxes because the sale does not occur in those local tax jurisdictions. Qualified Purchaser remits Colorado state, El Paso~~

~~County, and Pikes Peak Rural Transportation Authority sales taxes because the sale takes place in those state-administered local tax jurisdictions.~~

- ~~(iii) — The same facts occur as in Example ii, except Qualified Purchaser engages a third-party transportation company to pick up the goods from seller's store. The Department will presume the third-party transportation company is acting as Qualified Purchaser's agent and the sale occurs in the local tax jurisdiction in which the third party takes delivery from seller. Therefore, Qualified Purchaser remits Colorado state, Arapahoe County, RTD, and CD special district sales taxes to the Department.~~

Cross References

1. See Rule 39-26-102.9, 1 CCR 201-4 for the sourcing of sales for state and local sales tax purposes.

# **COLORADO DEPARTMENT OF REVENUE STATEMENT OF BASIS AND PURPOSE**

**Direct Payment Permit  
39-26-103.5  
1 CCR 201-4**

## **Basis**

The bases for this regulation are §§ 39-21-112(1); 39-26-102(8), (9), and (10); and 39-26-103.5, C.R.S.

## **Purpose**

The purpose of the amendment is to conform the regulation to changes made to proposed Regulation 39-26-102(9) regarding the sourcing of sales.



# Notice of Proposed Rulemaking

**Tracking number**

2018-00583

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-4

**Rule title**

SALES AND USE TAX

## Rulemaking Hearing

**Date**

11/30/2018

**Time**

02:00 PM

**Location**

1313 Sherman Street, Room 220, Denver, CO 80203

**Subjects and issues involved**

The proposed Retail Sales regulation is being amended to establish the location to which a retail sale is sourced within Colorado.

**Statutory authority**

§§ 29-2-105(1)(b), 39-21-112(1), 39-26-102(9), 39-26-102(10), 39-26-104, 39-26-107, 39-26-204(2), and 39-26-713, C.R.S.

## Contact information

**Name**

Josh Pens

**Title**

Director of Tax Policy Analysis

**Telephone**

303 866 3036

**Email**

josh.pens@state.co.us

## DEPARTMENT OF REVENUE

### Taxpayer Service Division – Tax Group

#### SALES AND USE TAX

##### 1 CCR 201-4

---

#### Regulation ~~39-26-102.(9).~~ **Retail Sales.**

**Basis and Purpose.** The bases for this rule are §§ 29-2-105(1)(b), 39-21-112(1), 39-26-102(9), 39-26-102(10), 39-26-104, 39-26-107, 39-26-204(2), and 39-26-713, C.R.S. The purpose of this rule is to establish the location to which a retail sale is sourced within Colorado.

- (1) ~~“Retail sale” “ includes all sales on which sales tax is imposed under § 39-26-104, C.R.S. of tangible personal property and the sales of those services specifically enumerated in the Act as rooms and accommodations, gas and electric service, steam, and telephone and telegraph service, and all such sales are subject to the tax imposed by this Act. A retail sale is a sale to the user or consumer of such tangible personal property or service. “Retail sale” does not include a wholesale sale.~~
- (2) ~~For the purposes of this Article, aA~~ retail sale is a sale to the user or consumer of ~~such~~ tangible personal property or service whether ~~such the~~ sale is made by a licensed vendor or is between private parties.
- (3) ~~“Retail sale” includes only those sales made within Colorado. For purposes of determining whether a sale of tangible personal property or services, other than leases or rentals controlled by subparagraphs (4), (5), or (6) below, and sales of mobile telecommunications services under §39-26-104(1)(c), C.R.S., is made within Colorado, the following rules apply:~~
  - (a) ~~When tangible personal property or services are received by the purchaser at a business location of the seller, the sale is sourced to that business location.~~
  - (b) ~~When tangible personal property or services are not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser’s donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), if that location is known to the seller.~~
  - (c) ~~When subparagraphs (3)(a) and (3)(b) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller’s business when use of this address does not constitute bad faith.~~
  - (d) ~~When subparagraphs (3)(a) through (3)(c) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser’s payment instrument, if no other address is available, when use of this address does not constitute bad faith.~~
  - (e) ~~When subparagraphs (3)(a) through (3)(d) do not apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the~~

- location will be determined by the address from which tangible personal property was shipped.
- (f) For the purpose of applying subparagraphs (3)(a) through (3)(e), the terms “receive” and “receipt” mean:
- (i) Taking possession of tangible personal property; or
  - (ii) Making first use of services; but not
  - (iii) Possession by a shipping company on behalf of the purchaser.
- (4) The lease or rental of tangible personal property, other than property identified in subparagraphs (5) or (6) shall be sourced as follows:
- (a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with subparagraph (3) of this rule. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.
  - (b) For a lease or rental that does not require periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subparagraph (3) of this rule.
  - (c) This subparagraph does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.
- (5) The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in subparagraph (6), shall be sourced as follows:
- (a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The location shall not be altered by intermittent use at different locations.
  - (b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subparagraph (3).
  - (c) This subparagraph does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated bases, or on the acquisition of property for lease.
- (6) The retail sale, including the lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subparagraph (3), notwithstanding the exclusion of lease or rental in subparagraph (3). “Transportation equipment” means any of the following:

- (a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.
- (b) Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are:
  - (i) Registered through the International Registration Plan; and
  - (ii) Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.
- (c) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.
- (d) Containers designed for use on and component parts attached or secured on the items set forth in subparagraphs (6)(a) through (6)(c).

# **COLORADO DEPARTMENT OF REVENUE STATEMENT OF BASIS AND PURPOSE**

**Retail Sales  
39-26-102(9)  
1 CCR 201-4**

## **Basis**

The bases for this regulation are §§ 29-2-105(1)(b), 39-21-112(1), 39-26-102(9), 39-26-102(10), 39-26-104, 39-26-107, 39-26-204(2), and 39-26-713, C.R.S.

## **Purpose**

The purpose of this proposed regulation is to establish the location to which a retail sale is sourced within Colorado.

# Notice of Proposed Rulemaking

**Tracking number**

2018-00589

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-4

**Rule title**

SALES AND USE TAX

**Rulemaking Hearing****Date**

11/30/2018

**Time**

02:00 PM

**Location**

1313 Sherman Street, Room 220, Denver, CO 80203

**Subjects and issues involved**

The Department is proposing to amend this miscellaneous sales tax exemptions regulation to conform the regulation to changes made to proposed Regulation 39-26-102(9) regarding the sourcing of sales.

**Statutory authority**

§§ 39-21-112(1) and 39-26-704, C.R.S.

**Contact information****Name**

Josh Pens

**Title**

Director of Tax Policy Analysis

**Telephone**

303 866 3036

**Email**

josh.pens@state.co.us

## DEPARTMENT OF REVENUE

### Taxpayer Service Division – Tax Group

#### SALES AND USE TAX

##### 1 CCR 201-4

---

#### Regulation 39-26-704~~(-2)~~.

- (1) All sales which the state of Colorado is prohibited from taxing under the constitution or laws of the United States or the state of Colorado are exempt, including sales to ambassadors, consuls, and their employees who are citizens of the nation they are representing.
- (2) Sales involving interstate commerce are exempt only in cases where the tax would be unconstitutional.
- ~~(3) Sales of tangible personal property located within this state at the time of sale and delivered within this state are taxable, irrespective of the ultimate destination of the property sold, or where the parties to the contract of sale are located, or where the contract was made or accepted or the funds paid.~~
- ~~(4) Sales of tangible personal property located within this state at the time of sale and delivered to the purchaser by the vendor or by common carrier to a destination outside this state for use outside this state are not taxable. Vendor's shipping records, bills of lading, or other proof satisfactory to the executive director must be retained to substantiate any exemption allowed for such sales in interstate commerce. On single sales of tangible personal property in excess of \$25,000.00, the purchaser shall execute and the vendor shall furnish the department "A-Certificate of Out of State Sale" on forms furnished by the department.~~
- ~~(5) Sales of merchandise ordered for delivery in this state are not necessarily exempt, even though the merchandise may be shipped from outside this state directly to the purchaser or indirectly through the vendor.~~
- (36) All sales to railroads, except as provided in C.R.S. 1973, 39-26-710(1)(a) and to other common carriers doing an interstate business, to telephone and telegraph companies, and to all other agencies engaged in interstate commerce are taxable in the same manner as are sales to other persons.

# **COLORADO DEPARTMENT OF REVENUE STATEMENT OF BASIS AND PURPOSE**

## **Miscellaneous Sales Tax Exemptions**

**39-26-704.2**

**1 CCR 201-4**

### **Basis**

The bases for this regulation are §§ 39-21-112(1) and 39-26-704, C.R.S.

### **Purpose**

The purpose of the amendment is to conform the regulation to changes made to proposed Regulation 39-26-102(9) regarding the sourcing of sales.



# Notice of Proposed Rulemaking

**Tracking number**

2018-00581

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-4

**Rule title**

SALES AND USE TAX

## Rulemaking Hearing

**Date**

11/30/2018

**Time**

02:00 PM

**Location**

1313 Sherman Street, Room 220, Denver, CO 80203

**Subjects and issues involved**

The amendment to the Auctioneers regulation is to conform the rule to changes made to Regulation 39-26-102(9) regarding the sourcing of sales.

**Statutory authority**

§§ 39-21-112(1); 39-26-102(1.3), (8), (9), and (10); 39-26-104; 39-26-105; and 39-26-106, C.R.S.

## Contact information

**Name**

Josh Pens

**Title**

Director of Tax Policy Analysis

**Telephone**

303 866 3036

**Email**

josh.pens@state.co.us

DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

SALES AND USE TAX

1 CCR 201-4

---

Regulation 39-26-102(1.3). Auctioneers. **UCTIONEERS**

**(1) Auctioneer's Duty to Collect Tax**

(a) Definitions

- (i) *Auction sale.* An auction sale is a sale conducted by an auctioneer who solicits offers to purchase tangible personal property or services until the highest offer is made.
- (ii) *Auctioneer.* An auctioneer is a person who sells an interest in tangible personal property or taxable services owned by the auctioneer or another person at an auction sale. An auctioneer has the legal authority to accept on behalf of the seller an offer to buy. An interest in property or services includes a lease and license. A person selling goods on consignment for another is an auctioneer if the sale is made at an auction sale. An auctioneer includes a person who is a lienholder, such as storageman, pawnbroker, motor vehicle mechanic, or artisan, and is selling the property at an auction sale to foreclose such lien.

- (b) *General Rule.* An auctioneer is a retailer and, therefore, must collect, report, and remit Colorado sales tax and state-administered local sales taxes to the Department, even if the auctioneer is a disclosed agent of the owner.

- (c) *Calculation of Tax.* Sales tax is calculated on the gross price paid by the buyer for the purchase of taxable tangible personal property or a taxable service, including any non-optional fee that only successful bidders must pay in order to purchase taxable goods or services, even if the non-optional fee is separately stated from the bid price paid for the auctioned item.

- (i) *Examples.*

- (A) Auctioneer sells restaurant equipment at auction for \$10,000 and charges a fee of ten percent of the selling price, which is deducted from the total sale proceeds paid by the purchaser(s). Sales tax is calculated on the selling price paid by a successful bidder (\$10,000), which includes the ten percent auctioneer's fee. Similarly, the fee is included in the sales tax calculation if the purchaser is required to pay the fee in addition to the successful bid price (i.e., tax calculated on \$11,000) because the fee is included in the overall purchase price of the item.
- (B) Auctioneer charges owners or bidders a flat "entrance" fee which compensates auctioneer for its cost to rent the auction facilities,

advertising, insurance, and/or auctioneer's administrative overhead. The fee is collected from sellers and bidders regardless of whether the owner's good(s) sells or the bidder purchases auctioned property or a service. The fee is not included in the calculation of sales tax because the fee is charged regardless of whether there is a taxable sale of goods or services. However, the fee is included in the calculation of sales tax if the fee (whether a flat or percentage fee) is due and payable only when goods or services are sold.

- (C) Auctioneer charges buyer a fee for additional services that buyer has the option, but is not required, to purchase as part of buyer's purchase of auctioned property or services, such as an optional fee for auctioneer's or seller's service of delivering the auctioned goods to buyer. The optional fee paid by buyer is not included in the sales tax calculation if, and only if, the fee is separately stated on the buyer's invoice.

- (d) *Local Sales Taxes.* ~~The location where the auction sale is conducted determines what, if any, state-administered local sales taxes apply, except as otherwise noted below. Auctioneers must collect any applicable state-administered local sales taxes.~~ For motor vehicles sold at auction, an auctioneer, who is required to collect sales tax (see paragraph (2)(b), below), must collect ~~the sales taxes of those~~any applicable state-administered local ~~sales taxes, unless the motor vehicle is exempted from such local sales tax by § 29-2-105(1)(e), C.R.S.~~ jurisdictions in which the location of the sale and the location where the motor vehicle will be registered are the same.

~~(i) — Examples:~~

- ~~(A) — Auctioneer conducts auction sale of office equipment at its sale yard located in Weld County. The seller is located in Arapahoe County. To facilitate the auction, the equipment is moved to the auctioneer's sale yard in Weld County. Buyers take possession of and title to the equipment at the auctioneer's Weld County auction yard. Except for motor vehicles, a sale takes place, for purposes of sales tax, where and when the purchaser takes possession of, or title to, the property. Because both possession and title are transferred in Weld County, the sale takes place in Weld County and auctioneer must collect Weld County sales tax. Auctioneer does not collect Arapahoe County sales tax, even though the seller is located in Arapahoe County because the sale takes place in Weld County.~~

(B) — Auctioneer has a sale yard in Weld County but conducts an auction sale of restaurant equipment, including a motor vehicle owned by the restaurant, at the restaurant's place of business, which is located in Berthoud, Larimer County. Buyers take possession of and title to the restaurant equipment in Berthoud. The purchaser of the motor vehicle resides in Arapahoe County, which is where the vehicle will be registered. Auctioneer collects Berthoud city sales tax and Larimer County sales tax on all the restaurant equipment because the sale takes place in those state-administered local tax jurisdictions. Auctioneer does not collect Weld County sales tax on any of the property because the sale occurred in Berthoud, Larimer County. If the auctioneer is not a licensed automotive dealer, then the auctioneer does not collect any tax for the sale of the vehicle. If the auctioneer is a licensed automotive dealer, the auctioneer does not collect Berthoud city sales tax or Larimer county sales tax on the motor vehicle because the city and county in which the sale occurs (Berthoud / Larimer) is not the same city or county in which the vehicle will be registered (Arapahoe County).

(ii) — *Exceptions.* An auctioneer does not collect the state-administered local taxes applicable to the place of sale if purchaser takes possession of the property (including possession by an agent of the purchaser, such as a transportation company engaged by buyer to pick up the property) outside the local jurisdiction where the sale takes place and in which the auctioneer does not have a business presence. See, §29-2-105(1)(b), C.R.S. (Retailer does not collect local sales tax if the property is delivered outside retailer's local tax jurisdiction).

(A) — *Examples.*

(I) — Auctioneer conducts an auction at its sale yard in Weld County. Purchaser A, who is located in Larimer County, uses its own vehicle to pick up the property at the auctioneer's sale yard. Purchaser B, who is located in Arapahoe County, requests auctioneer to arrange the delivery of the property by common carrier to Purchaser B. Auctioneer collects state-administered Weld County sales tax for Purchaser A because Purchaser A takes possession of the property in Weld County (i.e., the sale occurs in Weld County). For Purchaser B, auctioneer does not collect Weld County sales tax because the sale occurs where Purchaser B takes possession (and presumably title) in Arapahoe County. Auctioneer does not have sale yard or other business presence in Arapahoe County and, therefore, has no obligation to collect Arapahoe County sales tax.

(II) — Same facts as example (I) above, but auctioneer has a sale yard in both Weld County and a satellite office in Arapahoe County. Same result as example (I), except auctioneer must collect Arapahoe County sales tax from Purchaser B because the sale takes place in Arapahoe County and auctioneer has a business presence in Arapahoe County.

(III) ~~Auctioneer conducts an auction at its place of business in Weld County but the property is stored at the owner's warehouse, which is located in Pueblo County. Purchasers take delivery (and title) of the auctioned property in Pueblo County. Auctioneer does not have a satellite office in Pueblo County, but auctioneer sent three employees to Pueblo County to inventory, arrange, and label the property and to supervise a pre-auction viewing by prospective bidders. Because the sale takes place where delivery or title pass to purchasers, the sale occurs in Pueblo County where purchasers take possession (and presumably title), not Weld County where the auctioneer and bidders are located at the time of sale. Even though auctioneer does not have an office in Pueblo County, auctioneer has sufficient business activity in Pueblo County to be required to collect Pueblo County sales tax.~~

(2) **Exceptions to Auctioneer's Duty to Collect**

- (a) *Licensed Owners.* An auctioneer is not required to collect sales tax if the auctioneer sells taxable tangible personal property or services on behalf of a seller who, at the time of the sale, holds a current Colorado sales tax license issued by the Department. The licensed owner is responsible for collecting, remitting, and filing a sales tax return, even if the auctioneer was contractually obligated to the owner to collect the sales tax from the purchaser(s) and report and remit the tax to the Department, or if the auctioneer was contractually required to remit such collected tax to the licensed owner. An auctioneer, who is not legally required to collect tax because the owner is a licensed retailer but is collecting such tax on behalf of the owner, must disclose to the successful bidder the owner's name and owner's retail license number. An auctioneer who is not legally responsible to collect sales tax because the owner is a licensed retailer, but who nevertheless collects sales tax from a purchaser must hold the same in trust on behalf of the State of Colorado, and is liable for such tax if the tax is not remitted to the licensed seller or the Department.
- (b) *Sales of motor vehicles.* An auctioneer is not required to collect sales taxes due on the sale of a motor vehicle, unless the auctioneer is licensed by Colorado as an automotive dealer pursuant to §12-6-101, et seq., C.R.S and the sale or use of the vehicle is subject to tax. § 39-26-113(7)(a) and (b), C.R.S.
- (c) *Property Exempt from Sales Tax.* An auctioneer does not collect sales tax if the property is exempt from sales tax, such as an exempt farm close-out sale.
- (d) *Burden of Proof.* An auctioneer has the burden of establishing with objective, verifiable documentation an exception or exemption from collecting, reporting, and remitting sales tax. An auctioneer selling on behalf of a licensed seller or to a purchaser with a sales tax exemption certificate must obtain a copy of the owner's sales tax license or, in the case of an exempt sale, the sales tax license number or the purchaser's sales tax exemption certificate, and verify that such license or certificate is valid at the time of the sale.

Cross Reference(s):

- 1. Please visit the Department's website ([www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax)) for online services available for verifying tax licenses and exemption certificates.
- 2. See [Department Rule 39-26-716.4\(a\)](#), [1 CCR 201-4](#) regarding an auctioneer's duties for an exempt farm close-out sale.

- | 3. See ~~Department~~ Regulation 39-26-718, [1 CCR 201-4](#) for information on charitable entities conducting fundraising by auction sales.
- | [4. See Regulation 39-26-102.9, 1 CCR 201-4 for the sourcing of sales for state and local sales tax purposes.](#)
- | [54.](#) See, Department Publication FYI Sales 56, “Sales Tax on Leases of Motor Vehicles and Other Tangible Personal Property” for additional information about when local sales taxes must be collected by retailers on sales of motor vehicles.

# **COLORADO DEPARTMENT OF REVENUE STATEMENT OF BASIS AND PURPOSE**

**Auctioneers  
39-26-102(1.3)  
1 CCR 201-4**

## **Basis**

The bases for this rule are §§ 39-21-112(1); 39-26-102(1.3), (8), (9), and (10); 39-26-104; 39-26-105; and 39-26-106, C.R.S.

## **Purpose**

The purpose of the amendment is to conform the rule to changes made to Regulation 39-26-102(9) regarding the sourcing of sales.

# Notice of Proposed Rulemaking

**Tracking number**

2018-00610

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-13

**Rule title**

ENTERPRISE ZONE REGULATIONS

**Rulemaking Hearing****Date**

12/03/2018

**Time**

02:00 PM

**Location**

1375 Sherman Street, Room 127, Denver, CO 80203

**Subjects and issues involved**

The Department proposes to repeal the regulation as it provides no additional clarification of the related statute.

**Statutory authority**

§§ 39-21-112(1), 39-30-105.5, and 39-30-108(1), C.R.S.

**Contact information****Name**

Erika Hoxeng

**Title**

Tax Policy Analyst

**Telephone**

3038664805

**Email**

erika.hoxeng@state.co.us



## DEPARTMENT OF REVENUE

### Taxpayer Service Division – Tax Group

#### ENTERPRISE ZONE REGULATIONS

##### 1 CCR 201-13

---

#### **Regulation 39-30-105.5. Enterprise zone research and experimental expenditures credit,**

##### **(a) Credit allowed.**

- ~~(1) For income tax years beginning on or after January 1, 1989, taxpayers may claim an income tax credit with respect to expenditures made for research and experimental activities conducted in a Colorado enterprise zone. The credit is three percent of the amount of such expenditures allowed to be expensed (or which could have been expensed, had the taxpayer so elected) under the provisions of section 174 of the internal revenue code for the current tax year over the average of such amounts for the two preceding tax years.~~
- ~~(2) Research and experimental expenditures are expenditures incurred in the taxpayer's trade or business, which represent research and development costs in the experimental or laboratory sense. The term includes generally all such costs incident to the development of an experimental or pilot model, a plant process, a product, a formula, an invention, or similar property. Qualifying expenditures include not only costs paid or incurred by the taxpayer for research or experimentation undertaken directly by him but also to expenditures paid or incurred for experimentation carried out in his behalf by another person or organization. Expenditures by the taxpayer for the acquisition or improvement of land or property that is subject to an allowance for depreciation under section 167 or depletion under section 611 of the Internal Revenue Code are not qualifying expenditures for the purposes of determining this credit. The following expenditures also do not qualify:~~
- ~~(i) expenditures for ordinary testing or inspection of material for quality control, management, advertising or consumer studies, efficiency surveys, or promotions;~~
  - ~~(ii) cost of acquiring another person's patent, model, process, etc.;~~
  - ~~(iii) costs incurred in connection with literary, historical and similar projects;~~
  - ~~(iv) expenditures to ascertain the existence, location, extent or quality of mineral deposits, including oil and gas; and~~
  - ~~(v) amounts paid from funds furnished by a governmental agency.~~

##### **(b) Limitation on credit; carryover.**

- ~~(1) The amount of enterprise zone research and experimental credit allowed with respect to expenditures made during a given year is allowed over a four year period. One fourth of the credit is allowed for the year during which the expenditure was made and one fourth for each of the next three years. To the extent the credit for any year exceeds the tax liability for such year after other credits have been claimed, the excess may be carried forward and claimed until it is used up.~~

~~(2) Example of provisions of paragraph (b).~~

~~Example: The Spacerace Corporation had qualifying enterprise zone research and experimental activities expenditures during 1989 of \$618,000. The average of such expenditures for the two preceding tax years was \$370,000. The allowable credit is 3% of \$248,000 or \$7,440. One-fourth of this amount or \$1,860 may be claimed in each of the tax years, 1989, 1990, 1991 and 1992. If the 1989 tax were \$1,500, the \$360 excess could be carried to 1990 and added to the allowable credit for that year.~~

# **COLORADO DEPARTMENT OF REVENUE STATEMENT OF BASIS AND PURPOSE**

**Enterprise Zone Research and Experimental Expenditures Credit  
39-30-105.5  
1 CCR 201-13**

## **Basis**

The bases for this regulation are §§ 39-21-112(1), 39-30-105.5, and 39-30-108(1), C.R.S.

## **Purpose**

The purpose of the amendment is to repeal the regulation as it provides no additional clarification of the related statute.

# Notice of Proposed Rulemaking

**Tracking number**

2018-00609

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-13

**Rule title**

ENTERPRISE ZONE REGULATIONS

**Rulemaking Hearing****Date**

12/03/2018

**Time**

02:00 PM

**Location**

1375 Sherman Street, Room 127, Denver, CO 80203

**Subjects and issues involved**

The Department proposes to repeal the regulation as it provides no additional clarification of the related statute.

**Statutory authority**

§§ 39-21-112(1), 39-30-104(4), and 39-30-108(1), C.R.S.

**Contact information****Name**

Erika Hoxeng

**Title**

Tax Policy Analyst

**Telephone**

3038664805

**Email**

erika.hoxeng@state.co.us

DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

ENTERPRISE ZONE REGULATIONS

1 CCR 201-13

---

~~Regulation 39-30-104(4). Enterprise Zone Qualified Job Training Program Investment Credit.~~

~~(a) Credit allowed.~~

~~For income tax years beginning on or after January 1, 1997, a ten percent credit is allowed with respect to the total current year investment in a qualified job training program.~~

~~(b) Credit carryforward.~~

~~Excess credits may be carried forward for up to twelve years. The credits may not be carried back.~~

~~(c) Relocation facility.~~

~~No enterprise zone qualified jobs training program credit will be allowed for any expenditures resulting from the relocation of a facility from a location in Colorado to a location in an enterprise zone. This rule shall not apply if during the relocation, the new facility meets one of the criteria for determining an expansion facility: a \$1,000,000 or 100% investment increase or a 10 employee or 10% employee increase.~~

~~(d) Definitions.~~

~~(1) "Qualified job training program" means a structured training or basic education program conducted on-site or off-site by the taxpayer or another entity to improve the job skills of employees who are employed by the taxpayer. These employees must be working predominantly within an enterprise zone. On the job training is not a qualified job training program.~~

~~(2) "Total investment" means~~

~~A) Land, building, real property improvement, leasehold improvement, or space lease costs and the cost of any capital equipment purchased or leased by the taxpayer and used entirely within an enterprise zone primarily for qualified job training program purposes or to make a training site accessible to the extent such investments or costs do not qualify for the enterprise zone investment tax credit; and~~

~~B) Expenses for a qualified job training program, whether incurred within or outside of an enterprise zone, including expensed equipment, supplies, training staff wages or fees, training contract costs, temporary space rental, travel expenses, and other expense costs of qualified job training programs for employees working predominantly within an enterprise zone. Wages of employees being trained are not includible expenses.~~

# **COLORADO DEPARTMENT OF REVENUE STATEMENT OF BASIS AND PURPOSE**

## **Enterprise Zone Qualified Job Training Program Investment Credit 39-30-104(4) 1 CCR 201-13**

### **Basis**

The bases for this regulation are §§ 39-21-112(1), 39-30-104(4), and 39-30-108(1), C.R.S.

### **Purpose**

The purpose of the amendment is to repeal the regulation as it provides no additional clarification of the related statute.

# Notice of Proposed Rulemaking

**Tracking number**

2018-00611

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-13

**Rule title**

ENTERPRISE ZONE REGULATIONS

**Rulemaking Hearing****Date**

12/03/2018

**Time**

02:00 PM

**Location**

1375 Sherman Street, Room 127

**Subjects and issues involved**

The Department proposes to repeal the regulation as it provides no additional clarification of the related statute.

**Statutory authority**

§§ 39-21-112(1), 39-30-105.6, and 39-30-108(1), C.R.S.

**Contact information****Name**

Erika Hoxeng

**Title**

Tax Policy Analyst

**Telephone**

3038664805

**Email**

erika.hoxeng@state.co.us

DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

ENTERPRISE ZONE REGULATIONS

1 CCR 201-13

---

~~Regulation 39-30-105.6. Credit for rehabilitation of vacant enterprise zone buildings.~~

~~(a) Credit allowed.~~

- ~~(1) The building must be at least twenty years old and must have been unoccupied with no business activity for at least two years prior to the time the rehabilitation is begun.~~
- ~~(2) The \$50,000 per building limitation applies with respect to each owner, tenant, or group of owners or tenants. Taxpayer Brown may rehabilitate a building and claim a \$50,000 credit. He may later sell the building to taxpayer Green who may make additional rehabilitation and claim additional credit. In the case of an ownership or tenant group, the \$50,000 limitation applies to the group, and each partner, member or shareholder thereof is limited to his proportionate share of the overall limitation.~~
- ~~(3) If a taxpayer elects to claim the federal section 38 rehabilitation credit, he may not claim the Colorado enterprise zone credit for rehabilitation of a vacant building with respect to the same expenditures.~~

~~(b) Credit carryover. If the credit allowed for the rehabilitation of a vacant enterprise zone building exceeds the tax liability after reduction for previous credits claimed, the excess credit may be carried forward for a period of up to five years.~~

~~(c) Building defined. For purposes of the rehabilitation credit, the term building means any structure built for permanent use, as a house, factory, etc., which is valued separately for general property tax purposes.~~

~~(d) Qualifying expenditures defined.~~

- ~~(1) Qualified expenditures means expenditures associated with exterior improvements, structural improvements, mechanical improvements, or electrical improvements necessary to put the building into a proper condition for the operation of a commercial enterprise. Qualified expenditures may include expenditures associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, sprinkler systems installed for fire protection purposes, roofing and flashing, exterior repair, cleaning, tuckpointing, and cleanup.~~
- ~~(3) Qualified expenditures does not include soft costs such as the cost of appraisals, architectural, engineering, and interior design fees; legal, accounting, and realtor fees; loan fees; sales and marketing; closing; building permit, use, and inspection fees; bids; insurance; project signs and phones; temporary power; bid bonds; copying; and rent loss during construction. Qualifying expenditures does not include costs associated with the acquisition; interior furnishings; new additions except as may be required to comply with building and safety codes; excavation; grading; paving; landscaping, and repairs to outbuildings.~~



~~(e) Certification of qualified nature of expenditures. Any taxpayer claiming credit for the rehabilitation of an enterprise zone building must attach to his income tax return a certification from the enterprise zone administrator attesting to the qualified nature of the expenditures. He shall submit upon request copies of receipts, bills or any other documentation he may have that will verify the amount of the qualifying expenditures.~~

# **COLORADO DEPARTMENT OF REVENUE STATEMENT OF BASIS AND PURPOSE**

## **Credit for Rehabilitation of Vacant Enterprise Zone Buildings**

**39-30-105.6**

**1 CCR 201-13**

### **Basis**

The bases for this regulation are §§ 39-21-112(1), 39-30-105.6, and 39-30-108(1), C.R.S.

### **Purpose**

The purpose of the amendment is to repeal the regulation as it provides no additional clarification of the related statute.

# Notice of Proposed Rulemaking

**Tracking number**

2018-00608

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-13

**Rule title**

ENTERPRISE ZONE REGULATIONS

## Rulemaking Hearing

**Date**

12/03/2018

**Time**

02:00 PM

**Location**

1375 Sherman Street, Room 127, Denver, CO 80203

**Subjects and issues involved**

The Department is proposing to amend the Credit for Enterprise Zone Contributions to conform the regulation to statute and to clarify qualifications and limitations for the enterprise zone contribution credit. The amendment:  
clarifies the criteria for determining whether a contribution is a monetary contribution or an in-kind contribution;  
clarifies statutory provisions limiting (1) the total credit to \$100,000 and (2) the credit for in-kind contributions to 50% of the total credit; and  
clarifies that contributions made to donor advised funds, as defined under the Internal Revenue Code, do not qualify for the enterprise zone contribution credit.

**Statutory authority**

§§ 39-21-112(1), 39-30-103.5, and 39-30-108(1), C.R.S.

## Contact information

**Name**

Erika Hoxeng

**Title**

Tax Policy Analyst

**Telephone**

3038664805

**Email**

erika.hoxeng@state.co.us

DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

ENTERPRISE ZONE REGULATIONS

1 CCR 201-13

---

ENTERPRISE ZONE REGULATIONS

**Regulation 39-30-103.5. Credit ~~allowed against income tax for Enterprise Zone~~ contributions, to ~~enterprise zone administrator to implement economic development plan.~~**

**Basis and Purpose.** The statutory basis for this rule are §§ 39-21-112, 39-30-103.5, and 39-30-108, C.R.S. The purpose of the rule is to provide clarification regarding the credit for contributions to certified enterprise zone programs, projects, or organizations.

(1a) ~~General Rule. Credit allowed.~~ Subject to the limitations prescribed by paragraph (3) of this rule, ~~any taxpayer who makes a qualifying contribution is allowed a~~ credit is allowed against Colorado income tax ~~equal to twenty-five percent of the total value of the contribution as certified by the enterprise zone administrator.~~

(2) ~~Qualifying Contributions.~~ A qualifying contribution is ~~for~~ a monetary or in-kind contributions made for the purpose of implementing the economic development plan for the enterprise zone to an enterprise zone administrator or to a project, program, or organization certified by an ~~enterprise zone administrator to receive such contributions.~~

(b) ~~Use of contribution.~~ No credit will be allowed for a contribution that is used for a purpose that directly benefits the contributor. The contribution must be used for a purpose that is directly related to job creation, job preservation, or the promotion of temporary, emergency, or transitional housing programs for the homeless. Effective January 1, 2003, contributions used to promote community development projects will also qualify.

(a) ~~Monetary Contributions.~~ Monetary contributions are donations of cash or any payment of funds by check, electronic funds transfer (EFT), debit card, credit card, or any similar form of payment. A distribution of funds in the form of cash, check, or electronic funds transfer (EFT) from an individual retirement account, 401(k) plan account, or other similar qualified or nonqualified retirement or savings account qualifies as a monetary contribution.

(b) ~~In-Kind Contributions.~~ An in-kind contribution is any contribution other than a monetary contribution. In-kind contributions include contributions of stocks, bonds, and other similar intangible property.

(e3) ~~Computation of the Credit Limitations.~~ The credit allowed and determined pursuant to § 39-30-103.5(1)(a), C.R.S. and paragraph (1) of this rule is reduced by:

(a) the amount by which the credit determined pursuant to § 39-30-103.5(1)(a), C.R.S. and paragraph (1) of this rule exceeds \$100,000; and

(b) the amount by which the credit for in-kind contributions, calculated in accordance with § 39-30-103.5(1)(a), C.R.S. and paragraph (1) of this rule, exceeds fifty percent of the total

credit calculated pursuant to § 39-30-103.5(1)(a), C.R.S. and paragraphs (1) and (3)(a) of this rule.

(4) **Donor Advised Funds.** A donor who contributes to a donor advised fund, as defined in I.R.C. §4966(d)(2)(A) cannot claim the enterprise zone contribution credit for such contribution, even if the donor instructed the donor advised fund to contribute the funds to a Certified Program.

~~(1) The contribution credit for taxable years beginning prior to 1996 was limited to 50% of the value of the contribution. For taxable years beginning on or after January 1, 1996, the credit is limited to 25% of the value of the contribution.~~

~~(2) Credit for in-kind contributions are allowed at one-half the rate that would have been allowed for a monetary contribution of the same value. Thus where a 50% cash contribution credit would have been allowed, an in-kind contribution will create a credit of 25% of the value of the contribution; or where a 25% credit would have been allowed for a cash contribution, an in-kind credit will be 12.5% of the value of the contribution.~~

~~(3) Combined cash and in-kind contributions will generate credits at rates ranging from the cash credit to the in-kind credit rate depending on the proportions of the components. The credit will be the smaller of: (A) 100% of the cash contribution plus 12.5% of the total value of the combined contribution or \$50,000; (B) 25% of the total value of the combined contribution; or (C) \$100,000.~~

~~(d) Limitation on amount of credit that may be generated. Carryovers. The amount of credit that may be generated in any one tax year may not exceed \$100,000. The amount of credit that may be generated in any one tax year by in-kind contributions may not exceed \$50,000. If the amount of credit generated in one tax year exceeds the amount of tax, the excess may be carried forward for up to five tax years.~~

~~(e) Examples:~~

~~(1) Under the 25% credit limitation rules, the contribution of in-kind property with a value of \$100,000 will create a credit of \$12,500.~~

~~(2) If in addition to the \$100,000 of in-kind property, \$10,000 in cash is contributed, the credit becomes \$23,750 computed as follows:~~

Cash	\$10,000
In-Kind @ 12.5% of total contribution	\$13,750
Total credit	\$23,750

(3) However, once the credit for in-kind contributions hits the \$50,000 limitation, the effect of additional cash contributions becomes limited:

	<u>\$400,000 In-Kind Contribution plus:</u>	<u>No-Cash</u>	<u>\$ 10,000-Cash</u>	<u>\$ 100,000-Cash</u>
1.	Cash-Contribution	\$ 0	\$ 10,000	\$ 100,000
2.	In-Kind-Contribution	<u>\$ 400,000</u>	<u>\$ 400,000</u>	<u>\$ 400,000</u>

3.	Total Contribution	\$ 400,000	\$ 410,000	\$ 500,000
4.	Smaller of 50% or \$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000
5.	Limitation on In-Kind Credit	\$ 50,000	\$ 50,000	\$ 50,000
6.	Allowable In-Kind Credit	\$ 50,000	\$ 50,000	\$ 50,000
7.	Limitation on Cash Credit	\$ 50,000	\$ 50,000	\$ 50,000
8.	Allowable Cash Credit	\$ 0	\$ 10,000	\$ 50,000
9.	Total Credit	\$ 50,000	\$ 60,000	\$ 100,000

~~(f) Contributions to promote employment for the homeless.~~

~~(1) Contributions made to enterprise zone administrators or to projects, programs, or organizations certified to receive direct donations for the purpose of promoting employment for homeless persons in enterprise zones may qualify for the enterprise zone contribution tax credit.~~

~~(2) To be eligible to receive assistance from tax-credited contributions to enterprise zone administrators, an organization must meet the following criteria:~~

~~(A) Housing—An organization must offer temporary, emergency, or transitional housing for the homeless.~~

~~(B) Support services—In addition, a participating organization must have a regular on-going program offering child care, job placement, counseling, and/or other services appropriate to its clientele which support placement of the homeless in permanent employment.~~

~~(C) Referrals—The law allows an organization to meet the requirement for support services by offering referrals to such services. In this case, there should be a written agreement or letter substantiating the status of the relationship between the referring homeless provider and the referred-to support service organization. The agreement or letter should indicate that such referrals are appropriate and accepted subject to the same general conditions that would apply to other potential clientele of the referred-to organization.~~

~~(3) The statute authorizes the contributions "for the purpose of promoting employment for homeless persons in the enterprise zones." The required connection to the geography of an existing zone may be met by:~~

~~(A) The location within a zone of an organization's housing and employment support services.~~

~~(B) If the housing is not within a zone, demonstration to the enterprise zone administrator's satisfaction of a significant level of service in the zone. This may be shown by the location within the zone of an organization's facility offering employment referrals, counseling, and training; and/or clientele drawn from within the zone.~~

~~(C) In the case of an organization that provides services both within and outside of a zone, documentation to the enterprise zones administrator's satisfaction that the prorated or allocated costs providing services within the zone equal or exceed the amount of funds derived from enterprise zone contributions.~~

~~(g) Certificate of value and use. Any income tax return filed with the Department of Revenue wherein the taxpayer is claiming a credit for contribution to an enterprise zone administrator of \$250 or more must contain a certificate signed by the enterprise zone administrator or an official of the project, program, or organization certified to receive direct donations showing the value of the contribution and the use to which the contribution will be put.~~

# **COLORADO DEPARTMENT OF REVENUE STATEMENT OF BASIS AND PURPOSE**

## **Credit for Enterprise Zone Contributions**

**39-30-103.5**

**1 CCR 201-13**

### **Basis**

The bases for this regulation are §§ 39-21-112(1), 39-30-103.5, and 39-30-108(1), C.R.S.

### **Purpose**

The purpose of the amendment is to conform the regulation to statute and to clarify qualifications and limitations for the enterprise zone contribution credit. The amendment:

- clarifies the criteria for determining whether a contribution is a monetary contribution or an in-kind contribution;
- clarifies statutory provisions limiting (1) the total credit to \$100,000 and (2) the credit for in-kind contributions to 50% of the total credit; and
- clarifies that contributions made to donor advised funds, as defined under the Internal Revenue Code, do not qualify for the enterprise zone contribution credit.



# Notice of Proposed Rulemaking

**Tracking number**

2018-00613

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-13

**Rule title**

ENTERPRISE ZONE REGULATIONS

**Rulemaking Hearing****Date**

12/03/2018

**Time**

02:00 PM

**Location**

1375 Sherman Street, Room 127, Denver, CO 80203

**Subjects and issues involved**

The Department proposes to repeal the regulation as it provides no additional clarification of the related statute.

**Statutory authority**

§§ 39-21-112(1) and 39-30-108, C.R.S.

**Contact information****Name**

Erika Hoxeng

**Title**

Tax Policy Analyst

**Telephone**

3038664805

**Email**

erika.hoxeng@state.co.us

DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

ENTERPRISE ZONE REGULATIONS

1 CCR 201-13

---

**Regulation 39-30-108**

- (a) ~~The local government, with jurisdiction over the enterprise zone, shall annually certify on the form specified by the Director to the taxpayer claiming the exemption and credits under Part 1 of Article 30, Title 39, C.R.S. that the taxpayer's permanent place of business is located within the boundaries of the zone. In the case of a contribution to the zone administrator, the enterprise zone administrator, or an official of the project, program, or organization certified to receive direct donations shall certify on the form specified by the Director the value of the contribution and the use to which the contribution will be put. The taxpayer shall file a copy of this certification document with the Department of Revenue at the time of the tax return claiming the credits.~~
- (b) ~~The certification document is not required to claim a credit for contribution to an enterprise zone administrator of less than \$250, an investment tax credit of less than \$450, or a new business facility employee credit of less than \$450.~~
- (c) ~~Any electronically filed income tax return must include requested information from the certification and the certification form must be submitted to the Department of Revenue upon request.~~
-

# **COLORADO DEPARTMENT OF REVENUE STATEMENT OF BASIS AND PURPOSE**

## **Certifications**

**39-30-108**

**1 CCR 201-13**

## **Basis**

The bases for this rule are §§ 39-21-112(1) and 39-30-108, C.R.S.

## **Purpose**

The purpose of the amendment is to repeal the rule as it provides no additional clarification of the related statute.

# Notice of Proposed Rulemaking

**Tracking number**

2018-00612

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-13

**Rule title**

ENTERPRISE ZONE REGULATIONS

**Rulemaking Hearing****Date**

12/03/2018

**Time**

02:00 PM

**Location**

1375 Sherman Street, Room 127, Denver, CO 80203

**Subjects and issues involved**

The Department proposes to repeal the regulation as it provides no additional clarification of the related statute.

**Statutory authority**

§§ 39-21-112(1), 39-30-106, and 39-30-108(1), C.R.S.

**Contact information****Name**

Erika Hoxeng

**Title**

Tax Policy Analyst

**Telephone**

3038664805

**Email**

erika.hoxeng@state.co.us

## DEPARTMENT OF REVENUE

### Taxpayer Service Division – Tax Group

#### ENTERPRISE ZONE REGULATIONS

##### 1 CCR 201-13

---

#### **~~Regulation 39-30-106. Enterprise zone machinery and machine tool sales tax exemption.~~**

- ~~(1) Exemption provided. An exemption from Colorado sales tax is provided with respect to the purchase of machinery, machine tools, or parts thereof, or material for the construction or repair of machinery or machine tools, in excess of \$500 to the extent the machinery or machine tools is used exclusively in a manufacturing process carried on in a Colorado enterprise zone. This exemption applies to machinery, machine tools and parts purchased on or after January 1, 1988, and to material for the construction or repair of machinery or machine tools purchased on or after June 7, 1989. Machinery, machine tools, and parts purchased prior to June 7, 1989 did not qualify for this exemption unless it/they were capitalized on the taxpayer's books and met the definition of "qualifying property" as contained in section 48 of the internal revenue code as such section existed prior to the enactment of the "Revenue Reconciliation Act of 1990".~~
- ~~(2) Declaration of entitlement. Whenever a taxpayer making a purchase of machinery, machine tools, parts thereof, or material for the construction or repair of machinery or machine tools which qualifies for the exemption provided for by section 39-30-106 wishes to claim such exemption, he must complete two copies of Form 1191, "sales tax exemption on purchases of machinery and machine tools", give one copy to the vendor and send the other copy to the department of revenue within 20 days of the date of the purchase. The department of revenue will then determine whether or not the exemption claim is valid.~~

# **COLORADO DEPARTMENT OF REVENUE STATEMENT OF BASIS AND PURPOSE**

## **Enterprise Zone Machinery and Machine Tool Sales Tax Exemption**

**39-30-106**

**1 CCR 201-13**

### **Basis**

The bases for this regulation are §§ 39-21-112(1), 39-30-106, and 39-30-108(1), C.R.S.

### **Purpose**

The purpose of the amendment is to repeal the regulation as it provides no additional clarification of the related statute.

# Notice of Proposed Rulemaking

**Tracking number**

2018-00614

**Department**

200 - Department of Revenue

**Agency**

201 - Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-14

**Rule title**

RURAL TECHNOLOGY ENTERPRISE ZONES

**Rulemaking Hearing****Date**

12/03/2018

**Time**

02:00 PM

**Location**

1375 Sherman Street, Room 127, Denver, CO 80203

**Subjects and issues involved**

The Department proposes to repeal the regulation because the credit was last allowed in 2004 and could be carried forward for no more than 10 years.

**Statutory authority**

§§ 39-21-112(1) and 39-32-105, C.R.S.

**Contact information****Name**

Erika Hoxeng

**Title**

Tax Policy Analyst

**Telephone**

3038664805

**Email**

erika.hoxeng@state.co.us

DEPARTMENT OF REVENUE

Taxpayer Service Division - Tax Group

RURAL TECHNOLOGY ENTERPRISE ZONES

1 CCR 201-14 ~~(Repealed)~~

---

~~Regulation 39-32-105(1) -- Rural Technology Enterprise Zone Income Tax Credit.~~

- ~~1) The credit for approved investments in a rural technology enterprise zone is available in years ending on or after March 30, 2001 and beginning prior to January 1, 2005. March 30, 2001 is the date the Public Utilities Commission's rules became effective specifying what investments would qualify for the credit. See, 4 CCR 723-53 (pages 1 to 7).~~
- ~~2) The credit is limited as follows:~~
  - ~~a) The credit claimed shall not exceed \$100,000 per year. Qualified investments in excess of \$1 million in any tax year cannot earn a credit and cannot be carried forward.~~
  - ~~b) A partnership, S corporation, or other similar pass-through entity or a disregarded entity may pass through up to \$100,000 in total credit to its partners/shareholders/members. Each partner/shareholder/member's portion of the credit is determined according to the ratio in which profits/losses of the entity are allocated.~~



# **COLORADO DEPARTMENT OF REVENUE STATEMENT OF BASIS AND PURPOSE**

**Rural Technology Enterprise Zone Income Tax Credit  
39-32-105(1)  
1 CCR 201-14**

## **Basis**

The bases for this regulation are §§ 39-21-112(1) and 39-32-105, C.R.S.

## **Purpose**

The purpose of the amendment is to repeal the regulation because the credit was last allowed in 2004 and could be carried forward for no more than 10 years.

# Notice of Proposed Rulemaking

**Tracking number**

2018-00573

**Department**

500,1008,2500 - Department of Human Services

**Agency**

502 - Behavioral Health

**CCR number**

2 CCR 502-1

**Rule title**

BEHAVIORAL HEALTH

## Rulemaking Hearing

**Date**

12/07/2018

**Time**

08:30 AM

**Location**

1575 Sherman Street

**Subjects and issues involved**

Office of Behavioral Health (OBH) rule requires all agencies licensed or designated by OBH to complete a pre-employment background investigation which includes a child abuse registry (Trails) check. Section 19-1-307(2)(k), C.R.S. authorizes Trails checks for licensed child care operators for the purpose of screening an applicant for employment, but not Trails checks requested by other CDHS licensees. Because § 19-1-307(2), C.R.S., does not authorize the pre-employment Trails checks required in OBH rules 21.160.2 and 21.200.53, those rules are void under state law. This rule change removes the requirement that OBH-licensed and designated agencies must complete a Trails check when completing a pre-employment background investigation.

**Statutory authority**

26-1-107, C.R.S. (2017)  
26-1-109, C.R.S. (2017)  
26-1-111, C.R.S. (2017)  
19-1-307(2), C.R.S. (2017)  
27-65-105, 107, 109, C.R.S. (2017)  
27-65-128, C.R.S. (2017)  
27-66-104, C.R.S. (2017)  
27-80-108, C.R.S. (2017)  
27-81-108, C.R.S. (2017)

**Contact information****Name**

Ryan Templeton

**Title**

Rule Author

**Telephone**

303-866-7405

**Email**

ryan.templeton@state.co.us

**Title of Proposed Rule: Revisions to the Trails Check Requirement for Pre-Employment Screening**

**CDHS Tracking #: 18-07-27-01**

Office, Division, & Program: Rule Author: Ryan Templeton  
Office of Behavioral Health,  
Division of Community  
Behavioral Health

Phone: 303-866-7405

E-Mail:  
ryan.templeton@state.co.us

**STATEMENT OF BASIS AND PURPOSE**

**Summary of the basis and purpose for new rule or rule change.**

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. **1500 Char max***

Office of Behavioral Health (OBH) rule requires all agencies licensed or designated by OBH to complete a pre-employment background investigation which includes a child abuse registry (Trails) check. Section 19-1-307(2)(k), C.R.S. authorizes Trails checks for licensed child care operators for the purpose of screening an applicant for employment, but not Trails checks requested by other CDHS licensees. Because § 19-1-307(2), C.R.S., does not authorize the pre-employment Trails checks required in OBH rules 21.160.2 and 21.200.53, those rules are void under state law. This rule change removes the requirement that OBH-licensed and designated agencies must complete a Trails check when completing a pre-employment background investigation.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

- ☒ to comply with state/federal law and/or  
☐ to preserve public health, safety and welfare

Justification for emergency:

Section 19-1-307(2), C.R.S., does not authorize the pre-employment Trails checks required in OBH rules 21.160.2 and 21.200.53, those rules are void under state law.

**State Board Authority for Rule:**

Code	Description
26-1-107, C.R.S. (2017)	State Board to promulgate rules
26-1-109, C.R.S. (2017)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2017)	State department to promulgate rules for public assistance and welfare activities.

**Program Authority for Rule:** *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
19-1-307(2), C.R.S. (2017)	Authorizes Trails checks for licensed child care operators for the purpose of screening an applicant for employment.
27-65-105, 107, 109, C.R.S. (2017)	In order to provide care and treatment for individuals with mental health disorders, a facility must be designated or approved by CDHS.
27-65-128, C.R.S. (2017)	CDHS shall make rules to consistently enforce the provisions of Title 27, Article 65.
27-66-104, C.R.S. (2017)	A facility must be approved by CDHS in order for CDHS to purchase mental health services from the facility.
27-80-108, C.R.S. (2017)	CDHS to promulgate rules governing the provisions of Title 27, Article 80.
27-81-106, C.R.S. (2017)	OBH to establish standards for approved treatment agencies.
27-82-103, C.R.S. (2017)	OBH to establish standards for approved treatment agencies.

**Title of Proposed Rule: Revisions to the Trails Check Requirement for Pre-Employment Screening**

**CDHS Tracking #: 18-07-27-01**

Office, Division, & Program: Rule Author: Ryan Templeton  
Office of Behavioral Health,  
Division of Community  
Behavioral Health

Phone: 303-866-7405

E-Mail:  
ryan.templeton@state.co.us

Does the rule incorporate material by reference?

☐ Yes

☒ No

Does this rule repeat language found in statute?

☐ Yes

☒ No

If yes, please explain.

**REGULATORY ANALYSIS**

**1. List of groups impacted by this rule.**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

Agencies licensed or designated by the Office of Behavioral Health will no longer be required to run a pre-employment Trails check when screening an applicant for employment.  
The Department of Human Services may see a decrease in Trails check requests.

**2. Describe the qualitative and quantitative impact.**

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

The Office of Behavioral Health licenses or designates approximately 450 agencies. These 450 agencies are currently required to run a pre-employment Trails check when screening an applicant for employment.

**3. Fiscal Impact**

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just "no impact" answer should include "no impact because...."***

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

The Department of Human Services, Office of Early Childhood Background Investigation Unit may see a decrease in requests for Trails checks.

County Fiscal Impact

No federal fiscal impact is expected with this rule change because the Office of Behavioral Health does not regulate county agencies or facilities.

Federal Fiscal Impact

No federal fiscal impact is expected with this rule change because the Office of Behavioral Health does not regulate federal agencies or facilities.

**Title of Proposed Rule: Revisions to the Trails Check Requirement for Pre-Employment Screening**

**CDHS Tracking #: 18-07-27-01**

Office, Division, & Program:  
Office of Behavioral Health,  
Division of Community  
Behavioral Health

Rule Author: Ryan Templeton

Phone: 303-866-7405

E-Mail:

ryan.templeton@state.co.us

Other Fiscal Impact (such as providers, local governments, etc.)

Office of Behavioral Health licensed and designated agencies will no longer be required to submit pre-employment Trails check requests as part of their background investigation of applicants for employment.

#### **4. Data Description**

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

The Department of Human Services, Office of Early Childhood Background Investigation Unit Supervisor identified the issue of unauthorized agencies requesting Trails checks.

#### **5. Alternatives to this Rule-making**

*Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just “no alternative” answer should include “no alternative because...”*

An alternative to rule-making was sending Office of Behavioral Health licensed and designated agencies a letter explaining that the 2 CCR 502-1 rule sections requiring pre-employment Trails checks conflict with statute and are therefore void. In order for OBH rules to not conflict with statute rule-making was advised.

**Title of Proposed Rule: Revisions to the Trails Check Requirement for Pre-Employment Screening**

**CDHS Tracking #: 18-07-27-01**

Office, Division, & Program:  
Office of Behavioral Health,  
Division of Community  
Behavioral Health

Rule Author: Ryan Templeton

Phone: 303-866-7405

E-Mail:

ryan.templeton@state.co.us

**OVERVIEW OF PROPOSED RULE**

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
21.160.2	Trails check requirement conflicts with state statute	A. Pre-employment background investigations: 1. Shall be required for all staff, interns and volunteers who have direct contact with individuals receiving services. 2. Take place at submission of an initial Office of Behavioral Health license or designation application or take place at pre-employment. 3. Consist of at least the following: a. A criminal background check performed by the Colorado Bureau of Investigation; and b. A name search with Trails if direct contact with individuals under the age of eighteen.	A. Pre-employment background investigations: 1. Shall be required for all staff, interns and volunteers who have direct contact with individuals receiving services. 2. Take place at submission of an initial Office of Behavioral Health license or designation application or take place at pre-employment. 3. Consist of at least a criminal background check performed by the Colorado Bureau of Investigation.	OBH designated and licensed facilities are not authorized to request a Trails check for pre-employment screening.	No
21.200.53	Trails check requirement conflicts with state statute	K. Family advocacy programs will have policies and procedures concerning the work of family advocates and family systems navigators that address: 1. Experience and hiring requirements, including a name search through the Colorado Bureau of Investigation, and a check of child abuse and neglect records and reports in the Trails database maintained by the Colorado Department of Human Services;	K. Family advocacy programs will have policies and procedures concerning the work of family advocates and family systems navigators that address: 1. Experience and hiring requirements, including a name search through the Colorado Bureau of Investigation;	OBH designated and licensed facilities are not authorized to request a Trails check for pre-employment screening.	No

**Title of Proposed Rule: Revisions to the Trails Check Requirement for Pre-Employment Screening**

**CDHS Tracking #: 18-07-27-01**

Office, Division, & Program: Rule Author: Ryan Templeton  
Office of Behavioral Health,  
Division of Community  
Behavioral Health

Phone: 303-866-7405

E-Mail:  
ryan.templeton@state.co.us

**STAKEHOLDER COMMENT SUMMARY**

**Development**

*The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):*

The Department of Human Services, Office of Early Childhood Background Investigation Unit Supervisor identified the issue of unauthorized agencies requesting Trails checks. Upon notice from the Department of Human Services, the Office of Behavioral Health proposed emergency rule-making to remove the requirement that Office of Behavioral Health licensed and designated agencies must complete a Trails check when completing a pre-employment background investigation when screening an applicant for employment.

**This Rule-Making Package**

*The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:*

The Department of Human Services sent Office of Behavioral Health licensed and designated agencies a letter explaining that the 2 CCR 502-1 rule sections requiring pre-employment Trails checks conflict with statute and are therefore void.

The emergency rule-making packet, along with a feedback survey was posted on the Colorado Department of Human Services website. The Office of Behavioral Health informed behavioral health stakeholders through direct contact and through the OBH monthly newsletter that the adopted emergency rule-making packet was available for review and feedback. Behavioral Health stakeholders include: Colorado Behavioral Health Care Council; Colorado Hospital Association; Mental Health Colorado; Behavioral Health Transformation Council; Mental Health Disorders in the Criminal Justice System Task Force; Department of Public Health and Environment; Department of Regulatory Agencies; Department of Health Care Policy and Financing; Department of Public Safety; Disability Law Colorado; community mental health centers; community mental health clinics; hospitals; patient advocacy agencies; and, individuals and families with lived experience.

**Other State Agencies**

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

☐ Yes ☒ No

If yes, who was contacted and what was their input?

**Sub-PAC**

Have these rules been reviewed by the appropriate Sub-PAC Committee?

☐ Yes ☒ No

Name of Sub-PAC Not applicable

Date presented Not applicable

What issues were raised? Not applicable

Vote Count

For	Against	Abstain
-----	---------	---------

n/a	n/a	n/a
-----	-----	-----

If not presented, explain why. There is not a Behavioral Health Sub-PAC Committee.

**Title of Proposed Rule:** Revisions to the Trails Check Requirement for Pre-Employment Screening

**CDHS Tracking #:** 18-07-27-01

Office, Division, & Program:  
Office of Behavioral Health,  
Division of Community  
Behavioral Health

Rule Author: Ryan Templeton

Phone: 303-866-7405

E-Mail:

ryan.templeton@state.co.us

### PAC

Have these rules been approved by PAC?

☐ Yes ☒ No

Date presented	Not applicable		
What issues were raised?	Not applicable		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	n/a	n/a	n/a
If not presented, explain why.	Emergency Rule-making.		

### Other Comments

Comments were received from stakeholders on the proposed rules:

☐ Yes ☒ No

*If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.*



## (2 CCR 502-1)

### **21.160.2 BACKGROUND CHECKS AND EMPLOYEE VERIFICATION**

#### **A. Pre-employment background investigations:**

1. Shall be required for all staff, interns and volunteers who have direct contact with individuals receiving services.
2. Take place at submission of an initial Office of Behavioral Health license or designation application or take place at pre-employment.
3. Consist of at least ~~the following~~:
  - a. ~~—A criminal background check performed by the Colorado Bureau of Investigation; and~~
  - b. ~~—A name search with Trails if direct contact with individuals under the age of eighteen.~~

\*\*\*\*\*

### **21.200.53 Program Standards**

#### **K. Family advocacy programs will have policies and procedures concerning the work of family advocates and family systems navigators that address:**

1. Experience and hiring requirements, including a name search through the Colorado Bureau of Investigation, ~~and a check of child abuse and neglect records and reports in the Trails database maintained by the Colorado Department of Human Services;~~

# Notice of Proposed Rulemaking

**Tracking number**

2018-00594

**Department**

700 - Department of Regulatory Agencies

**Agency**

702 - Division of Insurance

**CCR number**

3 CCR 702-4 Series 4-1

**Rule title**

LIFE, ACCIDENT AND HEALTH, Series 4-1 Life Insurance

**Rulemaking Hearing****Date**

12/03/2018

**Time**

02:00 PM

**Location**

1560 Broadway, Ste 110 D, Denver CO 80202

**Subjects and issues involved**

4-1-12 CONCERNING THE DISCLOSURE REQUIREMENTS FOR ANNUITY TRANSACTIONS - The purpose of this regulation is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. The regulation specifies the minimum information which must be disclosed, the method for disclosing it and the use and content of illustrations, if used, in connection with the sale of annuity contracts. The goal of this regulation is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

**Statutory authority**

10-1-109 and 10-3-1110(1), C.R.S.

**Contact information****Name**

Christine Gonzales-Ferrer

**Title**

Rulemaking Coordinator

**Telephone**

303-894-2157

**Email**

christine.gonzales-ferrer@state.co.us

# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance

### 3 CCR 702-4

#### LIFE, ACCIDENT AND HEALTH

#### **Proposed** Amended Regulation 4-1-12

#### CONCERNING THE DISCLOSURE REQUIREMENTS FOR ANNUITY TRANSACTIONS

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Definitions
Section 5	Standards for the Disclosure Document and Buyer's Guide
Section 6	Standards for Annuity Illustrations
Section 7	Report to Contract Owners
Section 8	Severability
Section 9	Incorporated Materials
Section 10	Enforcement
Section 11	Effective Date
Section 12	History
Appendix	Annuity Illustration Example

#### **Section 1 Authority**

This regulation is promulgated and adopted by the Commissioner of Insurance-under the authority of §§ 10-1-109 and 10-3-1110(1), C.R.S.

#### **Section 2 Scope and Purpose**

The purpose of this regulation is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. The regulation specifies the minimum information which must be disclosed, the method for disclosing it and the use and content of illustrations, if used, in connection with the sale of annuity contracts. The goal of this regulation is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

#### **Section 3 Applicability**

This regulation applies to all group and individual annuity contracts and certificates except:

- A. Immediate and deferred annuities that contain no non-guaranteed elements:
- B. Annuities used to fund:
  - 1. An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA);
  - 2. A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for the purposes of ERISA, is established or maintained by the employer;

3. A governmental or church plan defined in Section 414 or a deferred compensation plan of a state or local government or a tax exempt organization under Section 457 of the Internal Revenue Code; or
4. A non-qualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

Notwithstanding ~~Paragraph~~Section 3.B. 1., the regulation shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two (2) or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this ~~sub~~Section 3.B., direct solicitation shall not include any meeting held by a producer solely for the purpose of education or enrolling employees in the plan or arrangement;

- C. Non-registered variable annuities issued exclusively to an accredited investor or qualified purchaser as those terms are defined by the Securities Act of 1933 (15 U.S.C. Section 77a et seq.), the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), or the regulations promulgated under either of those acts, and offered for sale and sold in a transaction that is exempt from registration under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.);
- D. Transactions involving variable annuities and other registered products in compliance with Securities and Exchange Commission (SEC) rules and Financial Industry Regulatory Authority (FINRA) rules relating to disclosures and illustrations.
  1. Notwithstanding ~~the sub~~Section 3.D. ~~above~~, the delivery of the applicable Buyer's Guide is required in sales of variable annuities and, when appropriate, in sales of other registered products.
  2. Nothing in ~~this sub~~Section 3.D. will limit the Commissioner's ability to enforce the provisions of this regulation or to require additional disclosure;
- E. Structured settlement annuities;
- F. Charitable gift annuities; and
- G. Funding agreements.

#### **Section 4 Definitions**

- A. "Buyer's Guide" means, for the purposes of this regulation, the National Association of Insurance Commissioners's approved Annuity Buyer's Guide.
  1. For sales of fixed or fixed indexed annuities, either the "Buyer's Guide for Deferred Annuities" or the "Buyer's Guide for Deferred Annuities – Fixed", dated 2013, as adopted by and available from the National Association of Insurance Commissioners (NAIC); or
  2. For sales of variable annuities, either the "Buyer's Guide for Deferred Annuities" or the "Buyer's Guide for Deferred Annuities – Variable", dated 2013, as adopted by and available from the NAIC.
- B. "Charitable gift annuity" shall have the same meaning as ~~the definition~~ found at § 10-1-102(4) ~~(a) through (c)(II)~~, C.R.S.

- C. “Contract owner” means, for the purposes of this regulation, the owner named in the annuity contract or certificate holder in the case of a group annuity contract.
- D. “Determinable elements” means, for the purposes of this regulation, elements that are derived from processes or methods that are guaranteed at issue and not subject to insurer discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, and charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.
- E. “Funding agreement” means, for the purposes of this regulation, an agreement for an insurer to accept and accumulate funds and to make one (1) or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.
- F. “Generic name” means, for the purposes of this regulation, a short title descriptive of the annuity contract being applied for or illustrated such as “single premium deferred annuity.”
- G. “Guaranteed elements” means, for the purposes of this regulation, the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, and charges or elements of formulas used to determine any of these, that are guaranteed or have determinable elements at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.
- H. “Illustration” means, for the purposes of this regulation, a personalized presentation or depiction prepared for and provided to an individual consumer that includes non-guaranteed elements of an annuity contract over a period of years.
- I. “Market Value Adjustment” or “MVA” means, for the purposes of this regulation, a feature that is a positive or negative adjustment that may be applied to the account value and/or cash value of the annuity upon withdrawal, surrender, contract annuitization or death benefit payment based on either the movement of an external index or on the insurer’s current guaranteed interest rate being offered on new premiums or new rates for renewal periods, if that withdrawal, surrender, contract annuitization or death benefit payment occurs at a time other than on a specified guaranteed benefit date.
- J. “Non-guaranteed elements” means, for the purposes of this regulation, the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, and charges or elements of formulas used to determine any of these, that are subject to insurer discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.
- K. “Structured settlement annuity” means, for the purposes of this regulation, a “qualified funding asset” as defined in Section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under Section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

## **Section 5      Standards for the Disclosure Document and Applicable Buyer’s Guide**

- A. When an insurer or an insurance producer receives an application for an annuity contract, the insurer or insurance producer must provide the applicant the disclosure document described in Subsection 5.B. and the applicable Buyer’s Guide for Deferred Annuities Buyer’s Guide in the current form prescribed by the National Association of Insurance Commissioners (NAIC) or in language approved by the Commissioner of Insurance.

1. Where the application for an annuity contract is taken in a face-to-face meeting, the applicant must, at or before the time of application, be given both the disclosure document described in **Subsection 5.B** and the applicable Buyer's Guide.
  2. Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant must be sent both the disclosure document and the applicable Buyer's Guide no later than five (5) business days after the completed application is received by the insurer.
    - a. With respect to an application received as a result of a direct solicitation through the mail:
      - (1) Providing the applicable Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application.
      - (2) Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.
    - b. With respect to an application received via the internet:
      - (1) Taking reasonable steps to make the applicable Buyer's Guide available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application.
      - (2) Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.
    - c. A solicitation for an annuity contract provided in other than a face-to-face meeting must include a statement that the proposed applicant may contact the Colorado Division of Insurance for a free annuity Buyer's Guide. In lieu of the forgoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity Buyer's Guide.
  3. Where the applicable Buyer's Guide and disclosure document are not provided at or before the time of application, a free look period of no less than fifteen (15) days must be provided for the applicant to return the annuity contract without penalty. This free look must run concurrently with any other free look provided under state law or regulation.
- B. At a minimum, the following information must be included in the disclosure document required to be provided under this regulation:
1. The generic name of the contract, the company product name, if different, form number, and the fact that it is an annuity;
  2. The insurer's legal name and physical address, website address and telephone number;
  3. A description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate:

- a. The guaranteed and non-guaranteed elements of the contract and their limitations, if any, including for fixed indexed annuities, the elements used to determine index-based interest, such as the participation rates, caps or spread, and an explanation of how they operate;
  - b. An explanation of the initial crediting rate, or for fixed indexed annuities, an explanation of how the index-based interest is determined, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;
  - c. Periodic income options both on a guaranteed and non-guaranteed basis;
  - d. Any value reductions caused by withdrawals from or surrender of the contract;
  - e. How values in the contract can be accessed;
  - f. The death benefit, if available, and how it will be calculated;
  - g. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and
  - h. Impact of any rider, including, but not limited to, a guaranteed living benefit or long-term care rider.
- 4. Specific dollar amount or percentage charges and fees must be listed with an explanation of how they apply; and
  - 5. Information about the current guaranteed rate or indexed crediting rate formula, if applicable, for new contracts that contains a clear notice that the rate is subject to change.
- C. Insurers must define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

## **Section 6      Standards for Annuity Illustrations**

- A. An insurer or insurance producer may elect to provide a consumer an illustration at any time, provided that the illustration is in compliance with this section and:
  - 1. Is clearly labeled as an illustration;
  - 2. Includes a statement referring consumers to the disclosure document and applicable Buyer's Guide provided to them at time of purchase for additional information about their annuity; and
  - 3. Is prepared by the insurer or third party using software that is authorized by the insurer prior to its use, provided that the insurer maintains a system of control over the use of illustrations.
- B. An illustration furnished to an applicant for a group annuity contract or contracts issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.
- C. The illustration must not be provided unless accompanied by the disclosure document referenced in Section 5.

- D. When using an illustration, the illustration must not:
1. Describe non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
  2. State or imply that the payment or amount of non-guaranteed elements is guaranteed; or
  3. Be incomplete.
- E. Costs and fees of any type must be individually noted and explained.
- F. An illustration must conform to the following requirements:
1. The illustration must be labeled with the date on which it was prepared;
  2. Each page, including any explanatory notes or pages, must be numbered and show its relationship to the total number of pages in the disclosure document (e.g., the fourth page of a seven-page disclosure document must be labeled "page 4 of 7 pages");
  3. The assumed dates of premium receipt and benefit payout within a contract year must be clearly identified;
  4. If the age of the proposed insured is shown as a component of the tabular detail, it must be issue age plus the number of years the contract is assumed to have been in force;
  5. The assumed premium on which the illustrated benefits and values are based must be clearly identified, including rider premium for any benefits being illustrated;
  6. Any charges for riders or other contract features assessed against the account value or the crediting rate must be recognized in the illustrated values and must be accompanied by a statement indicating the nature of the rider benefits or the contract features, and whether or not they are included in the illustration;
  7. Guaranteed death benefits and values available upon surrender, if any, for the illustrated contract premium must be shown and clearly labeled guaranteed;
  8. **Except as provided in Section 6.F.22.,** the non-guaranteed elements underlying the non-guaranteed illustrated values must be no more favorable than current non-guaranteed elements and must not include any assumed future improvement of such elements. Additionally, non-guaranteed elements used in calculating non-guaranteed illustrated values at any future duration must reflect any planned changes, including any planned changes that may occur after expiration of an initial guaranteed or bonus period;
  9. In determining the non-guaranteed illustrated values for a fixed indexed annuity, the index-based interest rate and account value must be calculated for three (3) different scenarios: one to reflect historical performance of the index for the most recent ten (10) calendar years; one to reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the least index value growth (the "low scenario"); **and** one to reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the most index value growth (the "high scenario"). The following requirements apply:
    - a. The most recent ten (10) calendar years and the last twenty (20) calendar years are defined to end on the prior December 31, except for illustrations prepared



during the first three (3) months of the year, for which the end date of the calendar year period may be the December 31 prior to the last full calendar year;

- b. If any index utilized in determination of an account value has not been in existence for at least ten (10) calendar years, indexed returns for that index must not be illustrated. If the fixed indexed annuity provides an option to allocate account value to more than one (1) indexed or fixed declared rate account, and one (1) or more of those indexes has not been in existence for at least ten (10) calendar years, the allocation to such indexed account(s) must be assumed to be zero;
- c. If any index utilized in determination of an account value has been in existence for at least ten (10) calendar years but less than twenty (20) calendar years, the ten (10) calendar year periods that define the low and high scenarios must be chosen from the exact number of years the index has been in existence;
- d. The non-guaranteed element(s), such as caps, spreads, participation rates or other interest crediting adjustments, used in calculating the non-guaranteed index-based interest rate must be no more favorable than the corresponding current element(s);
- e. If a fixed indexed annuity provides an option to allocate the account value to more than one (1) indexed or fixed declared rate account:
  - (1) The allocation used in the illustration must be the same for all three (3) scenarios; and
  - (2) The ten (10) calendar year periods resulting in the least and greatest index growth periods must be determined independently for each indexed account option.
- f. The geometric mean annual effective rate of the account value growth over the ten (10) calendar year period must be shown for each scenario;
- g. If the most recent ten (10) calendar year historical period experience of the index is shorter than the number of years needed to fulfill the requirement of ~~sub~~Section 6.H, the most recent ten (10) calendar year historical period experience of the index must be used for each subsequent ten (10) calendar year period beyond the initial period for the purpose of calculating the account value for the remaining years of the illustration;
- h. The low and high scenarios:
  - (1) ~~The scenarios nN~~eed not show surrender values (if different than account values);
  - (2) ~~The scenarios Must~~ not extend beyond ten (10) calendar years (and therefore are not subject to the requirements ~~sub~~Section 6.H. beyond ~~sub~~Section 6.H.1.; and
  - (3) ~~The scenarios mM~~ay be shown on a separate page.

A graphical presentation must also be included comparing the movement of the account value over the ten (10) calendar year period for the low scenario, the high scenario and the most recent ten (10) calendar year scenario; and

- i. The low and high scenarios should reflect the irregular nature of the index performance and should trigger every type of adjustment to the index-based interest rate under the contract. The effect of the adjustments should be clear; for example, additional columns showing how the adjustment applied may be included. If an adjustment to the index-based interest rate is not triggered in the illustration (because no historical values of the index in the required illustration range would have triggered it), the illustration must so state.
- 10. The guaranteed elements, if any, must be shown before corresponding nonguaranteed elements and must be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (e.g., “see page 1 for guaranteed elements”);
- 11. The account or accumulation value of a contract, if shown, must be identified by the name this value is given in the contract being illustrated and shown in close proximity to the corresponding value available upon surrender;
- 12. The value available upon surrender must be identified by the name this value is given in the contract being illustrated and must be the amount available to the contract owner in a lump sum after deduction of surrender charges, bonus forfeitures, contract loans, contract loan interest and application of any market value adjustment, as applicable;
- 13. Illustrations may show contract benefits and values in graphic or chart form in addition to the tabular form;
- 14. Any illustration of non-guaranteed elements must be accompanied by a statement indicating that:
  - a. The benefits and values are not guaranteed;
  - b. The assumptions on which they are based are subject to change by the insurer; and
  - c. Actual results may be higher or lower.
- 15. Illustrations based on non-guaranteed credited interest and non-guaranteed annuity income rates must contain equally prominent comparisons to guaranteed credited interest and guaranteed annuity income rates, including any guaranteed and non-guaranteed participation rates, caps or spreads for fixed indexed annuities;
- 16. The annuity income rate illustrated must not be greater than the current annuity income rate unless the contract guarantees are in fact more favorable;
- 17. Illustrations must be concise and easy to read;
- 18. Key terms must be defined and then used consistently throughout the illustration;
- 19. Illustrations must not depict values beyond the maximum annuitization age or date;
- 20. Annuitization benefits must be based on contract values that reflect surrender charges or any other adjustments, if applicable; and
- 21. Illustrations must show both annuity income rates per \$1,000.00 and the dollar amounts of the periodic income payable.

**22. For participating immediate and deferred income annuities:**

- a.** Illustrations may not assume any future improvement in the applicable dividend scale (or scales, if more than one (1) dividend scale applies, such as for a flexible premium annuity);
- b.** Illustrations must reflect the equitable apportionment of dividends, whether performance meets, exceeds or falls short of expectations;
- c.** If the dividend scale is based on a portfolio rate method, the portfolio rate underlying the illustrated dividend scale shall not be assumed to increase;
- d.** If the dividend scale is based on an investment cohort method, the illustrated dividend scale shall assume that reinvestment rates grade to long-term interest rates, subject to the following conditions:
  - (1)** Any assumptions as to future investment performance in the dividend formula must be consistent with assumptions that are reflected in the marketplace within the normal range of analyst forecasts and investor behavior; these assumptions may not be changed arbitrarily, notwithstanding changes in markets or economic conditions, and must be consistent with assumptions that the insurer uses with respect to other lines of business; and
  - (2)** The illustrated dividend scale shall assume that reinvestment rates grade to long-term interest rates, based on U.S. Treasury bonds. For the purposes of this grading, the assumed long-term rates shall not exceed the rates calculated using the formula in Section 6.F.22.d.(3), based on the time to maturity or reinvestment (the “tenor”) of the investments supporting the cohort of policies.
  - (3)** Maximum long-term interest rates must be calculated for tenors of three (3) months or less, five (5) years, ten (10) years and twenty (20) years or more, using U.S. Treasury rates. For each tenor, the maximum long-term interest rate will vary over time, based on historical interest rates as they emerge. The formula for the maximum long-term interest rate is the average of the median bond rate over the last 600 months and the average bond rate over the last 120 months, rounded to the nearest quarter of one percent (0.25%).
  - (4)** The maximum long-term interest rate for a tenor shall be recalculated once per year, in January, using historical rates as of December 31 of the calendar year two (2) years prior to the calendar year of the calculation date. The historical rate for each month is the rate reported for the last business day of the month.
  - (5)** Grading to the maximum long-term interest rates shall take place over:
    - (a)** No less than twenty (20) years from issue if U.S. Treasury rates as of the illustration date are below the long-term rates; or
    - (b)** No more than twenty (20) years from the issue if the U.S. Treasury rates as of the illustration date are above the long-term rates.

(6) When the ten (10) year U.S. Treasury rate is less than the ten (10) year maximum long-term interest rate, an additional illustrated dividend scale must be presented. This additional illustrated dividend scale shall satisfy the following conditions:

(a) Assume that reinvestment U.S. Treasury rates do not exceed the initial investment U.S. Treasury rates, and

(b) Illustrate dividends no less than half of the dividends illustrated under the current dividend scales.

(c) If Section 6.F.22.d.(6)(a) and (b) above are in conflict—i.e., if half of the current dividends are greater than would be permitted by Condition (a)—then the reinvestment U.S. Treasury rates shall equal the initial investment U.S. Treasury rates.

(7) Additional disclosures.

(a) The illustration shall include a disclosure that is substantially similar to the following:

The illustrated current dividend scale is based on interest rates that are assumed to gradually [increase/decrease] from current interest rates to long-term interest rates, over a period of [twenty] years. The long-term assumed interest rates cannot exceed the rates listed in column (c) of the table below.

(b) If the illustration contains an additional dividend scale pursuant to Section 6.F.22.d.(6), then the illustration must also include a disclosure that is substantially similar to the following:

The additional illustrated dividend scale is based on interest rates that are assumed not to increase and do not exceed the interest rates in column (b) of the table below.

(a): Tenor	(b): Current Interest Rate	(c): Long Term
	Treasury Rate as of 12/31/2016	Mean Reversed Treasury Rate
3 Month (or less)	0.51%	3.00%
5 Year	1.93%	4.50%
10 Year	2.45%	5.00%
20 Years (or more)	3.06%	5.50%

G. An annuity illustration must include a narrative summary that includes the following unless provided at the same time in a disclosure document:

1. A brief description of any contract features, riders or options, guaranteed and/or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the contract;

2. A brief description of any other optional benefits or features that are selected, but not shown in the illustration and the impact they have on the benefits and values of the contract;
3. Identification and a brief definition of column headings and key terms used in the illustration; and
4. A statement containing in substance the following:
  - a. For other than fixed indexed annuities:

“This illustration assumes the annuity’s current nonguaranteed elements will not change. It is likely that they will change and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees. The values in this illustration are not guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer’s Guide provided with your Annuity Contract for more detailed information.”
  - b. For fixed indexed annuities:

“This illustration assumes the index will repeat historical performance and that the annuity’s current non-guaranteed elements, such as caps, spreads, participation rates or other interest crediting adjustments, will not change. It is likely that the index will not repeat historical performance, the non-guaranteed elements will change, and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.

The values in this illustration are not guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer’s Guide provided with your Annuity Contract for more detailed information.”
5. Additional explanations as follows:
  - a. Minimum guarantees must be clearly explained;
  - b. The effect on contract values of contract surrender prior to maturity must be explained;
  - c. Any conditions on the payment of bonuses must be explained;
  - d. For annuities sold as an IRA, qualified plan or in another arrangement subject to the required minimum distribution (RMD) requirements of the Internal Revenue Code, the effect of RMDs on the contract values must be explained;
  - e. For annuities with recurring surrender charge schedules, a clear and concise explanation of what circumstances will cause the surrender charge to recur; and
  - f. A brief description of the types of annuity income options available must be explained, including:
    - (1) The earliest or only maturity date for annuitization (as the term is defined in the contract);

- (2) For contracts with an optional maturity date, the periodic income amount for at least one (1) of the annuity income options available based on the guaranteed rates in the contract, at the later of age seventy (70) or ten (10) years after issue, but in no case later than the maximum annuitization age or date in the contract;
- (3) For contracts with a fixed maturity date, the periodic income amount for at least one (1) of the annuity income options available, based on the guaranteed rates in the contract at the fixed maturity date; and
- (4) The periodic income amount based on the currently available periodic income rates for the annuity income option in ~~sub-paragraphs~~ **Section 6.G.5.f** (2) or (3) above, if desired.

H. Following the narrative summary, an illustration must include a numeric summary which must include at minimum, numeric values at the following durations:

1. The first ten (10) contract years or a surrender charge period if longer than ten (10) years, including any renewal surrender charge period(s);
2. Every tenth (10<sup>th</sup>) contract year up to the later of thirty (30) years or age seventy (70); and
3. The required annuitization age or the required annuitization date.

I. If the annuity contains a market value adjustment (MVA) the following provisions apply to the illustration:

1. The MVA must be referred to as such throughout the illustration;
2. The narrative must include an explanation, in simple terms, of the potential effect of the MVA on the value available upon surrender;
3. The narrative must include an explanation, in simple terms, of the potential effect of the MVA on the death benefit;
4. A statement, containing in substance the following, must be included:  
  
 "When you make a withdrawal the amount you receive may be increased or decreased by a Market Value Adjustment (MVA). If interest rates on which the MVA is based go up after you buy your annuity, the MVA likely will decrease the amount you receive. If interest rates go down, the MVA will likely increase the amount you receive."
5. Illustrations must describe both the upside and the downside aspects of the contract features relating to the market value adjustment;
6. The illustrative effect of the MVA must be shown under at least one positive and one negative scenario. This demonstration must appear on a separate page and be clearly labeled that it is information demonstrating the potential impact of a MVA;
7. Actual MVA floors and ceilings as listed in the contract must be illustrated; and
8. If the MVA has significant characteristics not addressed by ~~paragraphs Section 6.I.1.~~ **paragraphs Section 6.I.1.** through 6., the effect of such characteristics must be shown in the illustration. The Appendix provides an example of an illustration of an annuity containing an MVA that addresses ~~paragraphs Section 6.I.1. through 6.~~ **above**.

- J. A narrative summary for a fixed indexed annuity illustration also must include the following unless provided at the same time in a disclosure document:
1. An explanation, in simple terms, of the elements used to determine the index-based interest, including but not limited to, the following elements:
    - a. The “Index(es)” which will be used to determine the index-based interest;
    - b. The “Indexing Method”, such as point-to-point, daily averaging, monthly averaging;
    - c. The “Index Term”, the period over which indexed-based interest is calculated;
    - d. The “Participation Rate”, if applicable;
    - e. The “Cap”, if applicable; and
    - f. The “Spread”, if applicable.
  2. The narrative must include an explanation, in simple terms, of how index-based interest is credited in the indexed annuity;
  3. The narrative must include a brief description of the frequency with which the insurer can re-set the elements used to determine the index-based credits, including the participation rate, the cap, and the spread, if applicable; and
  4. If the product allows the contract holder to make allocations to declared-rate segment, then the narrative must include a brief description of:
    - a. Any options to make allocations to a declared-rate segment, both for new premiums and for transfers from the indexed-based segments; and
    - b. Differences in guarantees applicable to the declared-rate segment and the indexed-based segments.
- K. A numeric summary for a fixed indexed annuity illustration must include, at a minimum, the following elements:
1. The assumed growth rate of the index in accordance with **Subsection 6.F.9.**;
  2. The assumed values for the participation rate, cap and spread, if applicable; and
  3. The assumed allocation between indexed-based segments and declared-rate segment, if applicable, in accordance with **Subsection 6.F.9.**
- L. If the contract is issued other than as applied for, a revised illustration conforming to the contract as issued must be sent with the contract, except that non-substantive changes, including, but not limited to changes in the amount of expected initial or additional premiums and any changes in amounts of exchanges pursuant to Section 1035 of the Internal Revenue Code, rollovers or transfers, which do not alter the key benefits and features of the annuity as applied for will not require a revised illustration unless requested by the applicant.

## **Section 7      Report to Contract Owners**

For annuities in the payout period that include non-guaranteed elements and for deferred annuities in the accumulation period, the insurer must provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

- A. The beginning and the end date of the current report period;
- B. The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;
- C. The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and
- D. The amounts of outstanding loans, if any, as of the end of the current report period.

## **Section 8 Severability**

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

## **Section 9 Incorporated Materials**

The Buyer's Guide for Deferred Annuities – Fixed and Variable published by the National Association of Insurance Commissioners shall mean the Buyer's Guide for Deferred Annuities – Fixed and Variable as published on the effective date of this regulation and does not include later amendments to or editions of the Buyer's Guide for Deferred Annuities – Fixed and Variable. A copy of the Buyer's Guide for Deferred Annuities – Fixed and Variable may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202. A certified copy of the Buyer's Guide for Deferred Annuities – Fixed and Variable may be requested from the Division of Insurance. A charge for certification or copies may apply. A copy of the Buyer's Guide for Deferred Annuities – Fixed and Variable may be examined at any state publications depository library.

The Buyer's Guide for Deferred Annuities – Fixed only published by the National Association of Insurance Commissioners shall mean the Buyer's Guide for Deferred Annuities – Fixed only as published on the effective date of this regulation and does not include later amendments to or editions of the Buyer's Guide for Deferred Annuities – Fixed only. A copy of the Buyer's Guide for Deferred Annuities – Fixed only may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202. A certified copy of the Buyer's Guide for Deferred Annuities – Fixed only may be requested from the Division of Insurance. A charge for certification or copies may apply. A copy of the Buyer's Guide for Deferred Annuities – Fixed only may be examined at any state publications depository library.

The Buyer's Guide for Deferred Annuities – Variable only published by the National Association of Insurance Commissioners shall mean the Buyer's Guide for Deferred Annuities – Variable only as published on the effective date of this regulation and does not include later amendments to or editions of the Buyer's Guide for Deferred Annuities – Variable only. A copy of the Buyer's Guide for Deferred Annuities – Variable only may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202. A certified copy of the Buyer's Guide for Deferred Annuities – Variable only may be requested from the Division of Insurance. A charge for certification or copies may apply. A copy of the Buyer's Guide for Deferred Annuities – Variable only may be examined at any state publications depository library.

## **Section 10 Enforcement**

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition



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

#### **Section 11      Effective Date**

This regulation shall be effective ~~June~~February 1, 2014~~9~~, and apply to contracts sold on or after January 1, 2015.

#### **Section 12      History**

New regulation effective September 1, 2006.

Amended regulation effective January 1, 2007.

Amended regulation effective June 1, 2014.

Amended regulation effective February 1, 2019.

## APPENDIX

### Annuity Illustration Example

[The following illustration is an example only and does not reflect specific characteristics of any actual product for sale by any company.]

#### ABC Life Insurance Company

##### *Company Product Name*

Flexible Premium Fixed Deferred Annuity with a Market Value Adjustment (MVA)

An Illustration Prepared for John Doe by John Agent on mm/dd/yyyy

(Contact us at Policyownerservice@ABCLife.com or 555-555-5555)

Sex: Male	Initial Premium Payment: \$100,000.00
Age at Issue: 54	Planned Annual Premium Payments: None
Annuitant: John Doe	Tax Status: Nonqualified
Oldest Age at Which Annuity Payments Can Begin: 95	Withdrawals: None Illustrated

<b>Initial Interest Guarantee Period</b>	5 Years
<b>Initial Guaranteed Interest Crediting Rates</b>	
First Year (reflects first year only interest bonus credit of 0.75%):	4.15%
Remainder of Initial Interest Guarantee Period:	3.4%
<b>Market Value Adjustment Period:</b>	5 Years
<b>Minimum Guaranteed Interest Rate after Initial Interest Guarantee Period*:</b>	3%

\* After the Initial Interest Guarantee Period, a new interest rate will be declared annually. This rate cannot be lower than the Minimum Guaranteed Interest Rate.

### Annuity Income Options and Illustrated Monthly Income Values

This annuity is designed to pay an income that is guaranteed to last as long as the Annuitant lives. When annuity income payments are to begin, the income payment amounts will be determined by applying an annuity income rate to the annuity Account Value.

#### Annuity income options include the following:

- Periodic payments for Annuitant's life
- Periodic payments for Annuitant's life with payments guaranteed for a certain number of years
- Periodic payments for Annuitant's life with payments continuing for the life of a survivor annuitant

**Illustrated Annuity Income Option:** Monthly payments for annuitant's life with payments guaranteed for 10-year period.

**Assumed Age When Payments Start: 70**

	Account Value	Monthly Annuity Income Rate/\$1,000 of Account Value*	Monthly Annuity Income
Based on Rates Guaranteed in the Contract	\$164,798	\$5.00	\$823.99
Based on Rates Currently Offered by the Company	\$171,976	\$6.50	\$1,117.84

\* If, at the time of annuitization, the annuity income rates currently offered by the company are higher than the annuity income rates guaranteed in the contract, the current rates will apply.

**ABC Life Insurance Company**  
Company Product Name

Flexible Premium Fixed Deferred Annuity with a Market Value Adjustment (MVA)

An Illustration Prepared for John Doe by John Agent on mm/dd/yyyy

Contact us at Policyownerservice@ABCLife.com or 555-555-5555

Contract Year/Age	Premium Payment	Values Based on Guaranteed Rates				Values Based on Assumption that Initial Guaranteed Rates Continue		
		Interest Crediting Rate	Account Value	Cash Surrender Value Before MVA	Minimum Cash Surrender Value After MVA	Interest Crediting Rate	Account Value	Cash Surrender Value Before and After MVA
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1 / 55	\$100,000	4.15%	\$ 104,150	\$ 95,818	\$ 92,000	4.15%	\$ 104,150	\$ 95,818
2 / 56	0	3.40%	107,691	100,153	93,000	3.40%	107,691	100,153
3 / 57	0	3.40%	111,353	104,671	95,614	3.40%	111,353	104,671
4 / 58	0	3.40%	115,139	109,382	98,482	3.40%	115,139	109,382
5 / 59	0	3.40%	119,053	114,291	114,291	3.40%	119,053	114,291
6 / 60	0	3.00%	122,625	118,946	118,946	3.40%	123,101	119,408
7 / 61	0	3.00%	126,304	123,778	123,778	3.40%	127,287	124,741
8 / 62	0	3.00%	130,093	130,093	130,093	3.40%	131,614	131,614
9 / 63	0	3.00%	133,996	133,996	133,996	3.40%	136,089	136,089
10 / 64	0	3.00%	138,015	138,015	138,015	3.40%	140,716	140,716
11 / 65	0	3.00%	142,156	142,156	142,156	3.40%	145,501	145,501
16 / 70	0	3.00%	164,798	164,798	164,798	3.40%	171,976	171,976
21 / 75	0	3.00%	191,046	191,046	191,046	3.40%	203,268	203,268
26 / 80	0	3.00%	221,474	221,474	221,474	3.40%	240,255	240,255
31 / 85	0	3.00%	256,749	256,749	256,749	3.40%	283,972	283,972
36 / 90	0	3.00%	297,643	297,643	297,643	3.40%	335,643	335,643
41 / 95	0	3.00%	345,050	345,050	345,050	3.40%	396,717	396,717

### Column Descriptions

- (1) Ages shown are measured from the Annuitant's age at issue.
- (2) "Premium Payments" are assumed to be made at the beginning of the Contract Year shown.

#### Values Based on Guaranteed Rates

- (3) "Interest Crediting Rates" shown are annual rates; however, interest is credited daily. During the Initial Interest Guarantee Period, values developed from the Initial Premium Payment are illustrated using the Initial Guaranteed Interest Rate(s) declared by the insurance company, which include an additional first year only interest bonus credit of 0.75%. The interest rates will be guaranteed for the Initial Interest Guarantee Period, subject to an MVA. After the Initial Interest Guarantee Period, a new renewal interest rate will be declared annually, but can never be less than the Minimum Guaranteed Interest Rate shown.
- (4) "Account Value" is the amount you have at the end of each year if you leave your money in the contract until you start receiving annuity payments. It is also the amount available upon the Annuitant's death if it occurs before annuity payments begin. The death benefit is not affected by surrender charges or the MVA.
- (5) "Cash Surrender Value Before MVA" is the amount available at the end of each year if you surrender the contract (after deduction of any Surrender Charge) but before the application of any MVA. Surrender charges are applied to the Account Value according to the schedule below until the surrender charge period ends, which may be after the Initial Interest Guarantee Period has ended.

Years Measured from Premium Payment:	1	2	3	4	5	6	7	8+
Surrender Charges:	8%	7%	6%	5%	4%	3%	2%	0%

- (6) "Minimum Cash Surrender Value After MVA" is the minimum amount available at the end of each year if you surrender your contract before the end of five years, no matter what the MVA is. The minimum is set by law. The amount you receive may be higher or lower than the cash surrender value due to the application of the MVA, but never lower than this minimum.

Otherwise the MVA works as follows: If the interest rate available on new contracts offered by the company is LOWER than your Initial Guaranteed Interest Rate, the MVA will INCREASE the amount you receive. If the interest rate available on new contracts offered by the company is HIGHER than your initial guaranteed interest rate, the MVA will DECREASE the amount you receive. Page 4 of this illustration provides additional information concerning the MVA.

#### Values Based on Assumption that Initial Guaranteed Rates Continue

- (7) "Interest Crediting Rates" are the same as in Column (3) for the Initial Interest Guarantee Period.  
  
After the Initial Interest Guarantee Period, a new renewal interest rate will be declared annually. For the purposes of calculating the values in this column, it is assumed that the Initial Guaranteed Interest Rate (without the bonus) will continue as the new renewal interest rate in all years. The actual renewal interest rates are not subject to an MVA and will very likely NOT be the same as the illustrated renewal interest rates.
- (8) "Account Value" is calculated the same way as column (4).
- (9) "Cash Surrender Value Before and After MVA" is the Cash Surrender Value at the end of each year assuming that Initial Guaranteed Interest Rates continue, and that the continuing rates are the rates offered by the company on new contracts. In this case the MVA would be zero and Cash

Surrender Values before and after the MVA would be the same.

**Important Note:** This illustration assumes you will take **no** withdrawals from your annuity before you begin to receive periodic income payments. **Withdrawals will reduce both the annuity Account Value and the Cash Surrender Value.** You may make partial withdrawals of up to 10% of your account value each contract year without paying surrender charges. Excess withdrawals (above 10%) and full withdrawals will be subject to surrender charges.

**This illustration assumes the annuity's current interest crediting rates will not change. It is likely that they will change and actual values may be higher or lower than those in the illustration.**

**The values in this illustration are not guarantees or even estimates of the amounts you can expect from your annuity. For more information, read the annuity disclosure and annuity buyer's guide.**

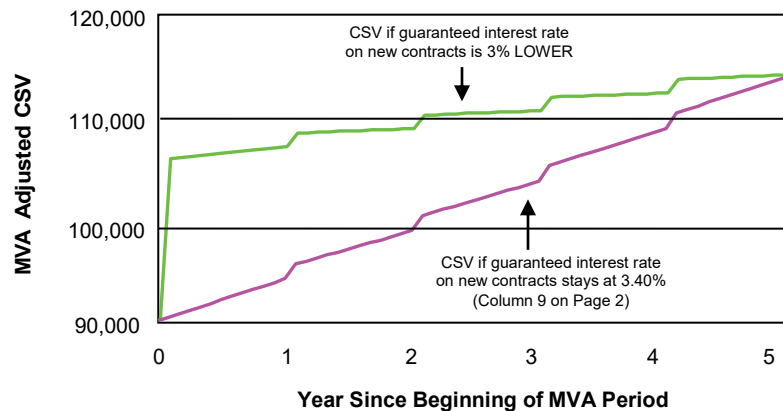
## MVA-adjusted Cash Surrender Values (CSVs) Under Sample Scenarios

The graphs below show MVA-adjusted Cash Surrender Values (CSVs) during the first five years of the contract, as illustrated on page 2 (\$100,000 single premium, a 5-year MVA Period) under two sample scenarios, as described below. **Graph #1** shows if the interest rate on new contracts is 3% LOWER than your Initial Guaranteed Interest Rate, the MVA will increase the amount you receive (green line). The pink line shows the Cash Surrender Values if the Initial Guaranteed Interest Rates continue (from Column (9) on Page 2).

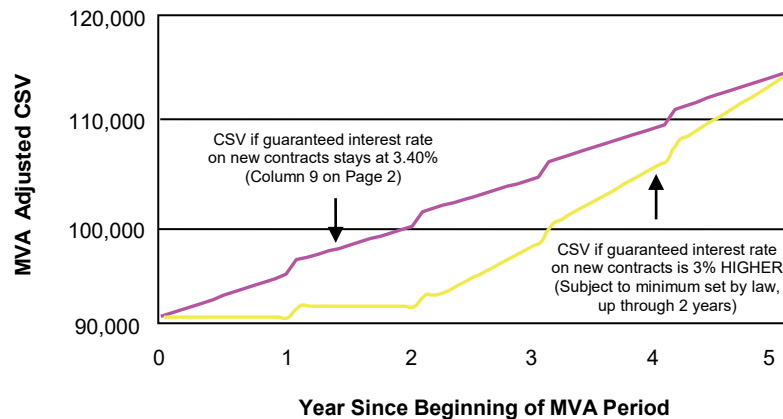
**Graph #2** shows if the interest rate on new contracts is 3% HIGHER than your Initial Guaranteed Interest Rate, the MVA will decrease the amount you receive, but not below the minimum set by law (Column (6) on Page 2), which in this scenario limits the decrease for the first 2 years (yellow line). The pink line shows the Cash Surrender Values if the Initial Guaranteed Interest Rates continue (from Column (9) on Page 2).

These graphs and the sample guaranteed interest rates on new contracts used are for demonstration purposes only and are not intended to be a projection of how guaranteed interest rates on new contracts are likely to behave.

### Initial Guaranteed Interest Rate on New Contracts is 3% LOWER



### Initial Guaranteed Interest Rate on New Contracts is 3% HIGHER



# Notice of Proposed Rulemaking

**Tracking number**

2018-00595

**Department**

700 - Department of Regulatory Agencies

**Agency**

702 - Division of Insurance

**CCR number**

3 CCR 702-4 Series 4-2

**Rule title**

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

**Rulemaking Hearing****Date**

12/03/2018

**Time**

02:00 PM

**Location**

1560 Broadway, Ste 110 D, Denver CO 80202

**Subjects and issues involved**

4-2-53 NETWORK ADEQUACY STANDARDS AND REPORTING REQUIREMENTS FOR ACA-COMPLIANT HEALTH BENEFIT PLANS  
- The purpose of this regulation is to provide carriers offering Affordable Care Act (ACA)-compliant health benefit plans with standards and guidance on Colorado filing requirements for health benefit plan network adequacy filings. These standards shall serve as the measurable requirements used by the Division to evaluate the adequacy of carrier networks.

**Statutory authority**

10-1-109(1), 10-16-109, and 10-16-708, C.R.S.

**Contact information****Name**

Christine Gonzales-Ferrer

**Title**

Rulemaking Coordinator

**Telephone**

303-894-2157

**Email**

christine.gonzales-ferrer@state.co.us



# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance

### 3 CCR 702-4

#### LIFE, ACCIDENT AND HEALTH

#### **Proposed** Amended Regulation 4-2-53

#### **NETWORK ADEQUACY STANDARDS AND REPORTING REQUIREMENTS FOR ACA-COMPLIANT HEALTH BENEFIT PLANS**

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Definitions
Section 5	Reporting Requirements
Section 6	Network Adequacy Standards
Section 7	Availability Standards
Section 8	Geographic Access Standards
Section 9	<b>Geographic Access Standards Health Care Facility Waiver Process</b>
Section 10	Essential Community Provider Standards
Section 1 <b>01</b>	Network Adequacy Requirements for Plans with Embedded Dental Benefits
Section 1 <b>12</b>	Requirements for Annual Network Adequacy Reporting
Section 1 <b>32</b>	Required Attestations
Section 1 <b>43</b>	Severability
Section 1 <b>54</b>	Incorporated Materials
Section 1 <b>65</b>	Enforcement
Section 1 <b>76</b>	Effective Date
Section 1 <b>87</b>	History
Appendix A	Designating County Types
Appendix B	Designating Provider/Facility Types
<b>Section 1</b>	<b>Authority</b>

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109(1), 10-16-109, 10-16-704(1-5), and 10-16-708, C.R.S.

## **Section 2      Scope and Purpose**

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

## **Section 3      Applicability**

This regulation applies to all carriers offering ACA-compliant individual or group health benefit plans- subject to the individual, small group, and/or large group laws of Colorado. This regulation excludes individual short-term policies as defined in § 10-16-102(60), C.R.S.

## **Section 4      Definitions**

A. "ACA" ~~or "PPACA"~~ means, for the purposes of this regulation, The Patient Protection and Affordable Care Act, Pub. L. 111-148 and the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152.

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

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

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

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

EF. "Dentist" and "~~D~~dental ~~P~~provider" mean, for the purposes of this regulation, a dental provider who is skilled in and licensed to practice dentistry for patients in all age groups and is responsible for the diagnosis, treatment, management, and overall coordination of services to meet the patient's oral health needs.

FG. "Embedded" means, for the purposes of this regulation, dental benefits provided as part of a health benefit plan, which may or may not be subject to the same deductible, coinsurance, copayment and out-of-pocket maximum of the health benefit plan.

GH. "Emergency services" shall have the same meaning as found ~~in~~at § 10-16-704(5.5)(b)(II), C.R.S.

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

IJ. "Essential community provider" or "ECP" means, for the purposes of this regulation, a provider that serves predominantly low-income, medically underserved individuals, including health care providers defined in ~~pp~~Part 4 of ~~aa~~Article 5 of ~~tt~~Title 25.5, C.R.S. and at 45 C.F.R. § 156.235(c).

K. "Health Facility" means, for the purposes of this regulation, an entity licensed or certified pursuant to Article 3 of Title 25 of the Colorado Revised Statutes, or the laws of another state, to provide health care services.

**JL.** “Health benefit plan” shall ~~for the purposes of this regulation,~~ have the same meaning as found ~~inat~~ § 10-16-102(32), C.R.S.

**KM.** “Health care services” shall have the same meaning as found at § 10-16-102(33), C.R.S.

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

**LP.** “Managed care plan” shall have the same meaning as found at § 10-16-102(43), C.R.S.

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

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

**OS.** “Network” shall have the same meaning as found at § 10-16-102(45), C.R.S.

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

**RU.** “Primary care provider” or “PCP” means, for the purposes of this regulation, a participating health care professional designated by the carrier to supervise, coordinate or provide initial care or continuing care to a covered person, and who may be required by the carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person. For the purposes of network adequacy measurements, PCPs for adults and children includes physicians (pediatrics, general practice, family medicine, internal medicine, geriatrics, obstetrician/gynecologist) and physician assistants and nurse practitioners supervised by, or collaborating with, a primary care physician.

**SV.** “Specialist” means, for the purposes of this regulation, a physician or non-physician health care professional who:

1. Focuses on a specific area of physical, mental or behavioral health or a group of patients; and
2. Has successfully completed required training and is recognized by the state in which he or she practices to provide specialty care.

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

**FW.** “Telehealth” shall have the same meaning as found ~~inat~~ § 10-16-123(4)(e), C.R.S.

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

## **Section 5      Reporting Requirements**

- A. Network adequacy filings for an ACA-compliant health benefit plan shall be filed with the Division through the National Association of Insurance Commissioners System for Electronic Rate and Form Filing ("SERFF") prior to use and annually thereafter.
- B. The following four (4) measurement standards shall be used to evaluate a carrier's network adequacy:
  1. Compliance with network adequacy instructions published by the Division;
  2. Compliance with network adequacy definitions contained in this regulation;
  3. Compliance with the measurement details contained in this regulation; and
  4. Compliance with the reporting methodologies contained in this regulation.
- C. Attestations of adequate networks, for each network, shall be provided on the "Carrier Network Adequacy Summary and Attestation Form" submitted as part of the network adequacy filing.

## **Section 6 Network Adequacy Standards**

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

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

## **Section 7 Availability Standards**

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

- B. The standards listed below shall be used to measure network adequacy, along with geographic access standards, in counties with “large metro, metro and micro” status, as defined in Appendix A, for the specific provider types listed in Section 7.D. of this regulation.
- C. The carrier shall attest that it is compliant with the “provider to enrollee” ratios standards in Section 7.D. of this regulation
- D. The following availability standards shall be met by all carriers filing ACA-compliant health benefit plans in order to comply with network adequacy requirements:

<b>Provider/Facility Type</b>	<b>Large Metro</b>	<b>Metro</b>	<b>Micro</b>
Primary Care	1:1000	1:1000	1:1000
Pediatrics	1:1000	1:1000	1:1000
OB/GYN	1:1000	1:1000	1:1000
Mental health, behavioral health and substance abuse disorder care providers	1:1000	1:1000	1:1000

## **Section 8 Geographic Access Standards**

- A. The carrier shall attest that at least one (1) of each of the providers and facilities listed below is available within the maximum road travel distance of any enrollee in each specific carrier’s network.
- B. Access standards may require that a policyholder cross county or state lines to reach a provider.
- C. Network Adequacy Geographic Access Standards by Provider Type:

<b>Specialty</b>	<b>Geographic Type</b>				
	<b>Large Metro</b>	<b>Metro</b>	<b>Micro</b>	<b>Rural</b>	<b>CEAC</b>
	<b>Maximum Distance (miles)</b>	<b>Maximum Distance (miles)</b>	<b>Maximum Distance (miles)</b>	<b>Maximum Distance (miles)</b>	<b>Maximum Distance (miles)</b>
Primary Care	5	10	20	30	60
Gynecology, OB/GYN	5	10	20	30	60
Pediatrics - Routine/Primary Care	5	10	20	30	60
Allergy and Immunology	15	30	60	75	110

Cardiothoracic Surgery	15	40	75	90	130
Cardiovascular Disease	10	20	35	60	85
Chiropracty	15	30	60	75	110
Dermatology	10	30	45	60	100
Endocrinology	15	40	75	90	130
ENT/Otolaryngology	15	30	60	75	110
Gastroenterology	10	30	45	60	100
General Surgery	10	20	35	60	85
Gynecology only	15	30	60	75	110
Infectious Diseases	15	40	75	90	130
Licensed Clinical Social Worker	10	30	45	60	100
Nephrology	15	30	60	75	110
Neurology	10	30	45	60	100
Neurological Surgery	15	40	75	90	130
Oncology - Medical, Surgical	10	30	45	60	100
Oncology - Radiation/ Radiation Oncology	15	40	75	90	130
Ophthalmology	10	20	35	60	85
Orthopedic Surgery	10	20	35	60	85
Physiatry, Rehabilitative Medicine	15	30	60	75	110
Plastic Surgery	15	40	75	90	130
Podiatry	10	30	45	60	100
Psychiatry	10	30	45	60	100
Psychology	10	30	45	60	100
Pulmonology	10	30	45	60	100
Rheumatology	15	40	75	90	130
Urology	10	30	45	60	100

Vascular Surgery	15	40	75	90	130
OTHER MEDICAL PROVIDER	15	40	75	90	130
Dentist	15	30	60	75	110
Pharmacy	5	10	20	30	60
Acute Inpatient Hospitals	10	30	60	60	100
Cardiac Surgery Program	15	40	120	120	140
Cardiac Catheterization Services	15	40	120	120	140
Critical Care Services – Intensive Care Units (ICU)	10	30	120	120	140
Outpatient Dialysis	10	30	50	50	90
Surgical Services (Outpatient or ASC)	10	30	60	60	100
Skilled Nursing Facilities	10	30	60	60	85
Diagnostic Radiology	10	30	60	60	100
Mammography	10	30	60	60	100
Physical Therapy	10	30	60	60	100
Occupational Therapy	10	30	60	60	100
Speech Therapy	10	30	60	60	100
Inpatient Psychiatric Facility	15	45	75	75	140
Orthotics and Prosthetics	15	30	120	120	140
Outpatient Infusion/Chemotherapy	10	30	60	60	100
OTHER FACILITIES	15	40	120	120	140

## Section 9 **Geographic Access Standard Health Care Facility Waiver Process**

**A.** A carrier may apply to the Commissioner for a health care facility waiver from a single geographic network adequacy requirement for a specific network and service area involving a single health care facility if all of the following conditions are met:

1. The carrier provides evidence that its good faith efforts to contract with the health care facility on reasonable terms have been unsuccessful;
2. The carrier provides evidence that the health care facility has acted or is acting in an anti-competitive or monopolistic fashion; and

3. The carrier is able to demonstrate that the granting of the waiver to not include the health care facility in their network will result in premium savings to covered persons.
- B. The health care facility waiver application shall include specific details regarding how the carrier will ensure that all covered persons will be notified if the application is approved, and that all covered persons will have access to covered benefits without unreasonable delay.
- C. An application for a health care facility waiver under this Section must be submitted to the Commissioner no later than ninety (90) days prior to the date that network adequacy filings must be submitted to the Division.
- D. Carriers shall provide a copy of the health care facility waiver application to the health care facility referenced in the waiver application at the same time that such an application is submitted to the Commissioner.
- E. The application for a health care facility waiver and the supporting documentation will be posted to the Division's website for thirty (30) days during which the Division will take and consider comments on the application.
- F. The Commissioner will inform a carrier, in writing, of the approval or denial of an application for a health care facility waiver under this Section prior to the date that network adequacy filings must be submitted to the Division. The Division's approval or denial of an application for a specific geographic network adequacy health care facility waiver will be made publically available on the Division's website.
- G. A geographic access standards health care facility waiver is valid only for the plan year for which it was submitted and approved, and shall expire at the end of that plan year.
- H. A carrier must submit a new health care facility waiver application for each plan year in which it seeks such a waiver.
- I. A carrier shall not submit an application for a health care facility waiver from the network adequacy requirements for primary care services or emergency services.

## **Section 10** Essential Community Provider Standards

- A. ACA-compliant health benefit plans and dual (both medical and dental) carriers are required to have a sufficient number and geographic distribution of essential community providers (ECPs), where available.
- B. Carriers shall ensure the inclusion of a sufficient number of ECPs to ensure reasonable and timely access to a broad range of ECP providers for low-income, medically underserved individuals in their service areas.
- C. There are two ECP standards for carrier ECP submissions:
1. General ECP Standard. Carriers utilizing this standard shall demonstrate in their "Essential Community Provider/Network Adequacy Template" that at least **thirty 30** percent (30%), as specified by Colorado, of available ECPs in each plan's service area participate in the plan's network. This standard applies to all carriers except those who qualify for the alternate ECP standard.
  2. Alternate ECP Standard. Carriers utilizing this standard shall demonstrate in their "Essential Community Provider/Network Adequacy Template" and justifications, that they have the same number of ECPs as defined in the general ECP standard (calculated as **thirty 30** percent (30%) of the ECPs in the carrier's service area), but the ECPs should be located within Health Professional Shortage Areas (HPSAs) or five-digit ZIP codes in



which **thirty 30** percent (30%) or more of the population falls below 200 percent (200%) of the federal poverty level (FPL). An alternate ECP standard carrier is one that provides a majority of covered professional services through physicians it employs or through a single contracted medical group.

## **Section 1011 Network Adequacy Requirements for Plans with Embedded Dental Benefits**

Health benefit plans that offer embedded dental coverage shall report all aspects of network adequacy required in Section 112 of this regulation for dental providers included in carrier networks. If the dental provider is not within the filing carrier's network, the carrier shall include network adequacy reporting for the "outside" dental network(s) within the medical network adequacy filing.

- A. The carrier shall attest that at least one (1) provider listed below is available within the maximum road travel distance for at least **ninety percent (90%)** of its enrollees in each specific Colorado service area as defined in Appendix A of this regulation:

Geographic Type					
Provider Type – the plan provides access to at least one dental provider for at least <b>ninety percent (90%)</b> of the enrollees	Large Metro	Metro	Micro	Rural	CEAC
	Maximum Road Travel Distance (Miles)	Maximum Road Travel Distance (Miles)	Maximum Road Travel Distance (Miles)	Maximum Road Travel Distance (Miles)	Maximum Road Travel Distance (Miles)
<b>Dentist</b>	15	30	60	75	110

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

## **Section 1112 Requirements for Annual Network Adequacy Reporting**

Annual network adequacy filings shall consist of two (2) sections, the Essential Community Providers/Network Adequacy Template filing in the Plan Management (Binder) section in SERFF, and a Network Adequacy form filing, filed with SERFF type of insurance (TOI) code NA01.004. All network adequacy documents must be filed by carrier network, rather than by plan type or group size. Each network (i.e. HMO, PPO, EPO, etc.) in the carrier's service area that is included on the network templates filed in any of a carrier's Binder filings shall be included in the carrier's "Essential Community Provider/Network Adequacy Template" filing and the carrier's Network Adequacy form filing. Templates and instructions specified by the Commissioner shall be used, and will be made available to carriers annually.

- A. Elements of the Binder Filing

1. All carriers shall submit network provider and facility listings on the "Essential Community Provider/Network Adequacy Template" in the Binder filing. All essential community providers (ECPs) in each network must be included in this template. The templates must be completed and filed as described in the Division instructions. Templates will require validation before submittal to the Division.
2. The "ECP Write-in Worksheet", if applicable, shall be filed on the "Supporting Documentation" tab of the Binder filing.

3. If a carrier does not meet the Colorado thirty percent (30%) ECP standard, the carrier shall submit a copy of the federal "Supplementary Response: Inclusion of Essential Community Providers" as part of its binder filing. Specific requirements for submitting the "Supplementary Response: Inclusion of Essential Community Providers" form are available from the Centers for Medicare and Medicaid Services (CMS).

**B. Elements of the Network Adequacy Form Filing**

1. Carriers shall submit network access plans for each network, pursuant to § 10-16-704(9), C.R.S. These must be attached as "Supporting Documentation" on the form filing.
2. Carriers shall submit an "Enrollment Document" containing separate spreadsheets for each network. Enrollment document instructions will be provided to carriers by the Division. Enrollment documents shall be submitted in an Excel format using the "DOI Enrollment Document Template". Counts used for this document shall be based on the projected enrollment of all members in the carrier's individual, small group and large group plans utilizing that specific network.
3. The carrier shall provide screen shots from the provider directory(ies) showing:
  - a. Master (entry) page of the carrier's website, directing users to the provider directory(ies);
  - b. Introduction screen of the provider directory;
  - c. Directory general information, such as inclusion criteria, description of tiering (if applicable), customer service contact information, date of last revisions, and directory disclosures;
  - d. Simple search screen;
  - e. A page of a provider directory produced from a search; and
  - f. Detail screen for at least one (1) provider and one (1) facility.
4. Carriers shall submit maps showing geographic access standards for selected providers and facilities for each network. Instructions for preparation of these documents and the providers to be included will be provided by the Division on an annual basis.

**Section 1213 Required Attestations**

- A. A carrier shall attest that each of its health benefit plans will maintain a provider network(s) that meets the standards contained in this regulation, and that each provider network is sufficient in number and types of providers, including providers that specialize in mental health and substance abuse services, to assure that the services will be accessible without unreasonable delay.
- B. A carrier shall attest that each of its health benefit plans include in its provider network(s) a sufficient number and geographic distribution of essential community providers (ECPs), where available, to ensure reasonable and timely access to a broad range of such providers for low-income, medically underserved individuals in its service areas.
- C. Each attestation shall be made on the "Carrier Network Adequacy Summary and Attestation Form" submitted with the network adequacy form filing.

**Section 1314 Severability**

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

#### **Section 1415 Incorporated Materials**

45 C.F.R. § 156.235(c) published by the Government Printing Office shall mean 45 C.F.R. § 156.235(c) as published on the effective date of this regulation and does not include later amendments to or editions of 45 C.F.R. § 156.235(c). A copy of 45 C.F.R. § 156.235(c) can be found at the following link: <http://www.gpo.gov/> and may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of 45 C.F.R. § 156.235(c) may be requested from the Division of Insurance. A charge for certification or copies may apply.

The “Supplementary Response: Inclusion of Essential Community Providers” published by the Centers for Medicare and Medicaid Services shall mean “Supplementary Response: Inclusion of Essential Community Providers” as published on the effective date of this regulation and does not include later amendments to or editions of the “Supplementary Response: Inclusion of Essential Community Providers”. A copy of the “Supplementary Response: Inclusion of Essential Community Providers” can be found at the following link: <https://www.qhpcertification.cms.gov/s/ECP%20and%20Network%20Adequacy> and may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of the “Supplementary Response: Inclusion of Essential Community Providers” may be requested from the Division of Insurance. A charge for certification or copies may apply.

“Essential Community Providers/Network Adequacy Template” published by the Centers for Medicare and Medicaid Services shall mean “Essential Community Providers/Network Adequacy Template” as published on the effective date of this regulation and does not include later amendments to or editions of the “Essential Community Providers/Network Adequacy Template”. A copy of the “Essential Community Providers/Network Adequacy Template” can be found at the following link: <https://www.qhpcertification.cms.gov/s/ECP%20and%20Network%20Adequacy> and may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of the “Essential Community Providers/Network Adequacy Template” may be requested from the Division of Insurance. A charge for certification or copies may apply.

#### **Section 1516 Enforcement**

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

#### **Section 1617 Effective Date**

This amended regulation shall be effective on ~~July~~ January ~~April 15~~, 201~~98~~.

#### **Section 1718 History**

New regulation effective January 1, 2017

Amended regulation effective July 1, 2018.

**Amended regulation effective April 15 2019.**

## APPENDIX A – DESIGNATING COUNTY TYPES

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

Density parameters are foundationally based on approaches taken by the U.S. Census Bureau in its delineation of “urbanized areas” and “urban clusters”, and the Office of Management and Budget (OMB) in its delineation of “metropolitan” and “micropolitan”. A county must meet both the population and density thresholds for inclusion in a given designation. For example, a county with population greater than one million and a density greater than or equal to 1,000 persons per square mile (sq. mile) is designated Large Metro. Any of the population-density combinations listed for a given county type may be met for inclusion within that county type (i.e., a county would be designated “Large Metro” if any of the three **(3)** Large Metro population-density combinations listed in the following table are met; a county is designated as “Metro” if any of the five **(5)** Metro population-density combinations listed in the table are met; etc.).

**Population and Density Parameters**

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

### COLORADO COUNTY DESIGNATIONS

County	Classification	County	Classification	County	Classification
Adams	Metro	Fremont	Rural	Morgan	Rural
Alamosa	Rural	Garfield	Micro	Otero	Rural
Arapahoe	Metro	Gilpin	Rural	Ouray	CEAC
Archuleta	CEAC	Grand	CEAC	Park	CEAC
Baca	CEAC	Gunnison	CEAC	Phillips	CEAC
Bent	CEAC	Hinsdale	CEAC	Pitkin	Rural
Boulder	Metro	Huerfano	CEAC	Prowers	CEAC
Broomfield	Metro	Jackson	CEAC	Pueblo	Micro
Chaffee	Rural	Jefferson	Metro	Rio Blanco	CEAC
Cheyenne	CEAC	Kiowa	CEAC	Rio Grande	Rural
Clear Creek	Rural	Kit Carson	CEAC	Routt	CEAC
Conejos	CEAC	Lake	Rural	Saguache	CEAC
Costilla	CEAC	La Plata	Micro	San Juan	CEAC
Crowley	CEAC	Larimer	Metro	San Miguel	CEAC
Custer	CEAC	Las Animas	CEAC	Sedgwick	CEAC
Delta	Rural	Lincoln	CEAC	Summit	Rural
Denver	Large Metro	Logan	Rural	Teller	Rural
Dolores	CEAC	Mesa	Micro	Washington	CEAC
Douglas	Metro	Mineral	CEAC	Weld	Metro
Eagle	Micro	Moffat	CEAC	Yuma	CEAC
Elbert	Rural	Montezuma	Rural		
El Paso	Metro	Montrose	Rural		

## APPENDIX B – DESIGNATING PROVIDER/FACILITY TYPES

### Provider Types – For ECP/Network Adequacy Template and Enrollment Document

Primary Care (including General Practice, Family Medicine, Internal Medicine, and Geriatric physicians, and Primary Care Physician Assistants and Nurse Practitioners)

Gynecology, OB/GYN

Pediatrics - Routine/Primary Care

Allergy and Immunology

Cardiovascular Disease

Chiropractic

Dermatology

Endocrinology

ENT/Otolaryngology

Gastroenterology

General Surgery

Infectious Diseases

Nephrology

Neurology

Neurological Surgery

Medical Oncology & Surgical Oncology

Radiation Oncology

Ophthalmology

Orthopedic Surgery

Physiatry, Rehabilitative Medicine (including physiatrist, physical medicine and rehabilitation specialist)

Plastic Surgery

Podiatry

Psychiatry

Pulmonology

Rheumatology

Urology

Vascular Surgery

Cardiothoracic Surgery

Licensed Clinical Social Worker

Psychology

OTHER MEDICAL PROVIDER

Dental

**Facility Types – For ECP/Network Adequacy Template and Enrollment Document**

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

# Notice of Proposed Rulemaking

**Tracking number**

2018-00596

**Department**

700 - Department of Regulatory Agencies

**Agency**

702 - Division of Insurance

**CCR number**

3 CCR 702-4 Series 4-2

**Rule title**

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

## Rulemaking Hearing

**Date**

12/03/2018

**Time**

02:00 PM

**Location**

1560 Broadway, Ste 110 D, Denver CO 80202

**Subjects and issues involved**

4-2-59 CONCERNING PREMIUM RATE SETTING FOR SHORT-TERM LIMITED DURATION HEALTH INSURANCE POLICIES - The purpose of this regulation is to provide the necessary guidance to carriers on the rate filing requirements for short-term limited duration health insurance policies.

**Statutory authority**

10-1-109, 10-3-1110, 10-16-107 and 10-16-109, C.R.S.

## Contact information

**Name**

Christine Gonzales-Ferrer

**Title**

Rulemaking Coordinator

**Telephone**

303-894-2157

**Email**

christine.gonzales-ferrer@state.co.us



# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance

### 3 CCR 702-4

#### LIFE, ACCIDENT AND HEALTH

**New Proposed Amended** Regulation 4-2-59

#### CONCERNING PREMIUM RATE SETTING FOR SHORT-TERM LIMITED DURATION HEALTH INSURANCE POLICIES

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Definitions
Section 5	General Rate Filing Requirements
Section 6	Actuarial Memorandum
Section 7	Premium Rate Setting
Section 8	Rate Filings
Section 9	Prohibited Rating Practices
Section 10	Severability
Section 11	Enforcement
Section 12	Effective Date
Section 13	History
Appendix A	Rate Filing Requirements
Appendix B	Summary
Appendix C	Rate History
Appendix D	Relation of Benefits to Premium
Appendix E	Provision for Profit and Contingencies
Appendix F1	Trend
Appendix F2	Monthly Historical Trend
Appendix F3	Monthly Normalized Trend

Appendix G	Credibility
Appendix H	Experience
Appendix I	Side-by-Side Comparison
Appendix J	Projected Benefits Ratio

## **Section 1      Authority**

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109, 10-3-1110, 10-16-107 and 10-16-109, C.R.S.

## **Section 2      Scope and Purpose**

The purpose of this regulation is to provide the necessary guidance to carriers on the rate filing requirements for short-term limited duration health insurance policies.

## **Section 3      Applicability**

This regulation applies to all carriers that issue short-term limited duration health insurance policies for policies that are marketed and/or issued on or after the effective date of this regulation. This regulation excludes limited benefit plans, non-grandfathered health benefit plans, grandfathered health benefit plans and any other policy which does not meet the definition of a short-term limited duration health insurance policy.

## **Section 4      Definitions**

- A. "Benefits ratio" shall have the same meaning as found at § 10-16-102(5), C.R.S.
- B. "Carrier" shall have the same meaning as found at § 10-16-102(8), C.R.S.
- C. "Covered lives" means, for the purposes of this regulation, the number of enrollees, subscribers and dependents covered by the issued short-term limited duration health insurance policy.
- D. "Covered person" shall have the same meaning as found at § 10-16-102(15), C.R.S.
- E. "Effective date" means, for the purposes of this regulation, the date the coverage is effective.
- F. "Excessive rates" means, for the purposes of this regulation, rates that are likely to produce a long run profit that is unreasonably high for the insurance provided or if the rates include a provision for expenses that is unreasonably high in relation to the services rendered. In determining if the rate is excessive, the Commissioner may consider profits, dividends, annual rate reports, annual financial statements, subrogation funds credited, investment income or losses, unearned premium reserve, reserve for losses, surpluses, executive salaries, expected benefits ratios, and any other appropriate actuarial factors as determined by accepted actuarial standards of practice. The Commissioner may require the submission of additional relevant information deemed necessary in determining whether to approve or disapprove a rate filing.
- G. "File and use" means, for the purposes of this regulation, a filing procedure that does not require approval by the Commissioner prior to distribution, release to producers, collection of premium, advertising, or any other use of the rate.
- H. "Filing date" means, for the purposes of this regulation, the day the rate filing is received by the Division.

- I. "Geographic area" means, for the purposes of this regulation, ~~the zip codes or counties with uniform costs and utilization, as designated by the carrier and supported by appropriate actuarial data~~ the geographic areas established by the Commissioner by rule that are to be used by short-term limited duration health insurance carriers in the state of Colorado.
- J. "Health benefit plan" shall have the same meaning as found at § 10-16-102(32), C.R.S.
- K. "Implementation date" means, for the purposes of this regulation, the specific date that the filed or approved rates can be charged to an individual.
- L. "Inadequate rates" means, for the purposes of this regulation, rates that are insufficient to sustain projected losses and expenses, or if the use of such rates, if continued, will tend to create a monopoly in the marketplace. In determining if the rate is inadequate, the Commissioner may consider profits, dividends, annual rate reports, annual financial statements, subrogation funds credited, investment income or losses, unearned premium reserve, reserve for losses, surpluses, executive salaries, expected benefits ratios, and any other appropriate actuarial factors as determined by accepted actuarial standards of practice. The Commissioner may require the submission of additional relevant information deemed necessary in determining whether to approve or disapprove a rate filing.
- M. "New policy form" and ~~"N~~ew policy form and/or product" means, for the purposes of this regulation, a policy form that has "substantially different new benefits" or unique characteristics associated with risk or costs that are different from existing policy forms. For example: A guaranteed issue policy form is different than an underwritten policy form, a managed care policy form is different than a non-managed care policy form, a direct written policy form is different from a policy sold using producers, etc.
- N. "On-rate-level premium" means, for the purposes of this regulation, the premium that would have been generated if the present rates had been in effect during the entire period under consideration.
- O. "Plan" means, for the purpose of this regulation, the specific benefits and cost-sharing provisions available to a covered person.
- ~~P. "PPACA" means, for the purposes of this regulation, The Patient Protection and Affordable Care Act, Pub. L. 111-148 and the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152.~~
- ~~Q~~P. "Pre-existing condition" means, for the purposes of this regulation, an injury, sickness, or pregnancy for which a person has incurred charges, received medical treatment, consulted a health care professional or taken prescription drugs within the 12 months preceding the coverage effective date under a short-term policy.
- ~~R~~Q. "Product(s)" means, for the purposes of this regulation, the services covered as a package under a policy form by a carrier, which may have several cost-sharing options and riders as options.
- ~~S~~R. "Qualified actuary" means, for the purposes of this regulation, a member of the American Academy of Actuaries, or a person who has demonstrated to the satisfaction of the Commissioner that the person has sufficient educational background and who has not less than seven (7) years of recent actuarial experience relevant to the area of qualifications, as defined in Colorado Insurance Regulation 1-1-1.
- ~~T~~S. "Rate" means, for the purposes of this regulation, the amount of money a carrier charges as a condition of providing health coverage. The rate charged normally reflects such factors as the carrier's expectation of the insured's future claim costs; the insured's share of the carrier's claim

settlement; operational and administrative expenses; and the cost of capital. This amount is net of any adjustments, discounts, allowances or other inducements permitted by the contract.

- VI.** “Rate filing” means, for purposes of this regulation, a filing that contains all of the items required in this regulation, including the proposed base rates and all rating factors, the underlying rating assumptions, support for new product offerings and for all changes in existing rates, factors and assumptions utilized, including the continued use of trend factors.
- WU.** “Retention” means, for the purposes of this regulation, the sum of all non-claim expenses including investment income from unearned premium reserves, contract or policy reserves, reserves from incurred losses, and reserves from incurred but not reported losses as the percentage of total premium.
- XV.** “Review and approval” or “prior approval” means, for the purposes of this regulation, a filing procedure that requires a rate change to be affirmatively approved by the Commissioner prior to distribution, release to producers, collection of premium, advertising, or any other use of the rate.
- YW.** “SERFF” means, for the purposes of this regulation, the System for Electronic Rate and Form Filings.
- ZX.** “Short-term limited duration health insurance policy” or “short-term policy” shall have the same meaning as found at § 10-16-102(60), C.R.S.
- AA.** “Substantially different new benefit” means, for the purposes of this regulation, adding or deleting a benefit from the package. The offering of additional cost sharing options (i.e. deductibles and copayments) to what is offered as an existing product does not create a new policy form.
- AB.** “Trend” or “trending” means, for the purposes of this regulation, any procedure for projecting losses to the average date of loss, or of projecting premium or exposures to the average date of writing.
- AC.** “Trend factors” means, for purposes of this regulation, rates or rating factors which vary over time or due to the duration that the insured has been covered under the policy or certificate, and which reflect any of the components of medical or insurance trend assumptions used in pricing.
- AD.** “Unfairly discriminatory rates” means, for the purposes of this regulation, charging different rates for the same benefits provided to individuals, or groups, with like expectations of loss; or if after allowing for practical limitations, differences in rates which fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory solely if different premiums result for policyholders with like loss exposures but different expenses, or like expenses but different loss exposures, so long as the rate reflects the differences with reasonable accuracy.
- AE.** “Use of the rates” means, for the purposes of this regulation, the distribution of rates or factors to calculate the premium amount for a specific policy or certificate holder including advertising, distributing rates or premiums to producers, and disclosing premium quotes. It does not include releasing information about the proposed rating change to other government entities or disclosing general information about the rate change to the public.

## **Section 5      General Rate Filing Requirements**

### **A.      Rate Filing Types**

#### **1.      Review and Approval**

Any proposed increase, which is any increase in any base rate, any rating factor, or the continuation of trend factors, is subject to prior approval by the Commissioner, and shall be filed with the Division.

To determine if the filing is subject to review and approval, calculations shall reflect both the twelve (12) month cumulative impact of trend and any changes to rating factors or base rates.

2. File and Use

Any new product, or existing product that does not contain a proposed increase, is not subject to prior approval by the Commissioner, and shall be filed with the Division.

To determine if the filing is subject to file and use, calculations shall reflect the twelve (12) month cumulative impact of trend and any changes to rating factors or base rates. If there is an annual cumulative decrease in rates during the filed rating period, then the filing would be considered as file and use.

B. Timing and General Rate Filing Requirements

1. Carrier Requirements

- a. Carriers shall submit rate filings for review and approval to the Commissioner at least sixty (60) days prior to the proposed implementation date of the rates.
- b. For new products and annual filings that are not experiencing a rate increase, carriers shall submit file and use rate filings at least one day prior to the implementation date.
- c. Filings that are resubmissions of previously withdrawn, rejected or disapproved rate filings shall be considered new filings.

2. Rate Filing Deadlines

a. Rate Review Deadlines

- (1) The filing shall be reviewed for completeness and, if found incomplete, the Commissioner may reject or disapprove the filing within the first thirty (30) calendar days of the review period. If the Commissioner has not rejected or disapproved the filing on or before the thirtieth (30) day, the filing shall be considered complete.
- (2) If the Commissioner reviews the filing for substantive content, any deficiencies identified shall be corrected on a prospective basis. Any rate deficiency identified will be subject to a penalty if the violation is determined to be willful. Violations may include, but are not limited to, rates that are found to be excessive, inadequate or unfairly discriminatory.
- (3) If the Commissioner does not approve or disapprove a rate filing within sixty (60) days of the filing date, the carrier may implement and reasonably rely on the rates. Carriers may be required to correct the rates on a prospective basis if the Commissioner determines that the rates are excessive, inadequate or unfairly discriminatory. No penalty will be applied for a non-willful violation identified in this manner.

b. The Division will utilize the following, as provided in § 2-4-108, C.R.S.:

- (1) To determine the start of the thirty (30) and sixty (60) calendar day period, the day after the filing date will be utilized. For example, if a filing is submitted in SERFF on June 1, the review period will begin on June 2, regardless of the day of the week.
- (2) If the thirtieth (30) or sixtieth (60) calendar day falls on a Saturday, Sunday, or legal holiday, the review period will be extended to the next business day which is not a Saturday, Sunday, or legal holiday. For example, if the 60-day period expires on July 4, the review period will be extended to July 5, as long as July 5 falls on a business day.

3. Rate Filing Guidelines and Review Guidelines

a. General Rate Filing Requirements

- (1) Rates on all health insurance policies, riders, contracts, endorsements, certificates, and other evidence of health care coverage, shall be filed with the Division prior to the marketing, issuance or deliverance of coverage.
- (2) All carriers shall submit a compliant rate filing whenever the rates to be charged to new policyholders ~~or certificate holders~~ differ from the rates on file with the Division. Included in this requirement are the following changes:
  - (a) Periodic recalculation of experience;
  - (b) Change in rate calculation methodology;
  - (c) Changes in the trend; and/or
  - (d) Other changes in rating assumptions.
- (3) All carriers shall submit a compliant rate filing on at least an annual basis to support the continued use of trend factors which change on a predetermined basis. Trend factors which change on a predetermined basis can be continued for no more than a period of twelve (12) months. To continue the use of trend factors that change on a predetermined basis, a filing shall be submitted for that particular form with an implementation date within one (1) year of the implementation of the most recent approved rate filing.
- (4) All carriers shall submit a compliant rate filing when the rates are changed on an existing product even if the rate change pertains to new business only.
- (5) All carriers shall submit a compliant rate filing within sixty (60) calendar days after Commissioner approval of the merger, assumption or acquisition of a block of business.
- (6) Each line of business requires a separate rate filing. Rate filings shall not be combined with form filings.

- (7) All carriers are expected to review their experience on a regular basis, no less than annually, and file revisions, as appropriate and in a timely manner, to ensure that rates are not excessive, inadequate or unfairly discriminatory and to avoid filing large rate changes.
- (8) Carriers shall not represent an existing product to be a new policy form, or product, unless it fits the definition set forth in Section 4. **NM**. of this regulation.
- (9) A separate filing shall be submitted for each carrier. A single filing made for more than one carrier, or for a group of carriers, is not permitted. This applies even if a product is comprised of components from more than one carrier, such as an HMO/Indemnity/Point of Service plan.

b. General Elements of Rate Filings

- (1) All rate filings shall be filed electronically in a format made available by the Division, unless exempted by rule for an emergency situation as determined by the Commissioner.
- (2) The rate filing shall demonstrate that the proposed rates are not excessive, inadequate, or unfairly discriminatory.
- (3) The rate filing shall contain detailed support as to why the assumptions upon which the trend factors are based continue to be appropriate.
- (4) The rate filing shall contain Colorado experience in the actuarial memorandum.
- (5) If Colorado experience is partially credible, similar coverage and/or nationwide experience shall also be submitted.
- (6) For a merger or acquisition, the assuming or acquiring carrier shall provide support for the rating factors, even if there is no change in the rating factors. The new filing shall demonstrate that the rating assumptions are still appropriate.
- (7) The Form Schedule tab in SERFF shall be completed for all rate filings. This tab shall list all policies, riders, endorsements, or certificates affected by the rate filing. Actual forms shall not be attached to the rate filing.
- (8) The Implementation Date Requested field on the General Information tab in SERFF shall be completed with a specific date. Using a notation such as "On Approval" is not a valid response.
- (9) The Commissioner may require submission of any relevant information deemed necessary in determining whether to approve or disapprove a rate filing.

c. Rate Filing Disapproval Requirements

The Commissioner shall disapprove the rate filing if any of the following apply:

- (1) The benefits provided are not reasonable in relation to the premiums charged;
- (2) The rate filing contains rates that are excessive, inadequate, unfairly discriminatory, or otherwise does not comply with the provisions of this regulation;
- (3) The data and/or actuarial support do not justify the requested rate increase;
- (4) The rate filing is incomplete; or
- (5) The data in the filing fails to adequately support the proposed rates.

#### 4. Rate Usage Guidelines

##### a. Review and Approval

- (1) If the Commissioner approves the rate filing within sixty (60) calendar days, as specified in Section 5.B.2.a. of this regulation, the carrier may utilize the rates for business effective on the implementation date or later. Under no circumstances shall the carrier provide insurance coverage using the rates until on or after the proposed implementation date specified in the rate filing.
- (2) Carriers are permitted to bill and require payment for new rates prior to the implementation date; however, carriers shall not use the new rates, bill or require payment from consumers with an effective date prior to the implementation date.

##### b. File and Use

Current law allows for file and use rate filings to be used no sooner than the day after the filing date. Correction of any deficiency shall be on a prospective basis.

##### c. Withdrawn, Rejected or Disapproved Filings

Rates for filings that are withdrawn, rejected or disapproved shall not be used or distributed. Use of rates in rate filings that are withdrawn, rejected or disapproved shall constitute a violation of Colorado law.

##### d. Rates Not on File

- (1) Any rates or rating factors that are not on file with the Division shall not be used.
- (2) Failure to file a compliant rate filing shall render the carrier as using unfiled rates and the Division will take appropriate action as allowed by Colorado law.

#### 5. Confidentiality

- a. All rate filings submitted shall be considered public and shall be open to public inspection, unless the information may be considered confidential pursuant to § 24-72-204, C.R.S.



b. The Division does not consider the following as confidential:

(1) Rates;

(2) Rating factors; and

(3) Information required for inclusion in the actuarial memorandum.

c. The entire filing, including the actuarial memorandum, cannot be held as confidential.

d. There shall be a separate SERFF component for the confidential exhibits, which shall be indicated as such by the confidential icon in SERFF.

e. A "Confidentiality Index" shall be completed if the carrier desires confidential treatment of any information submitted. The Division will evaluate the reasonableness of any request for confidentiality and will provide notice to the carrier if the request for confidentiality is rejected.

## Section 6 Actuarial Memorandum

The rate filing shall contain a compliant actuarial memorandum, which is comprised of two (2) parts: a narrative and an Excel spreadsheet. To ensure compliance with this regulation, the Division will supply an Excel template for the items required to be submitted in Excel. Carriers shall supply all items that require a narrative as a separate document in PDF format. The narrative shall contain complete support for any calculated item or provide adequate details. The actuarial memorandum and all supporting documents or exhibits shall be attached to the Supporting Documents tab in SERFF, and shall be accompanied by a certification signed by, or prepared under the supervision of, a qualified actuary, in accordance with the actuarial certification requirements of this regulation. Only the rate manual shall be attached to the Rate/Rule tab in SERFF.

### A. Summary

The memorandum shall contain a summary that includes, but is not limited to, the following:

#### 1. Reason(s) for the Rate Filing

A statement as to whether or not this is a new product offering; a rate revision to an existing product, which includes rates applicable to new business only; or a new option being added to an existing form. If the filing is a rate revision, the reason for the revision shall be clearly stated.

This information shall be included in the narrative.

#### 2. Requested Rate Action

The overall rate increase or decrease shall be listed. The listed rate change and the average change in each rate component shall be provided. The submission shall also list the twelve (12) month changes by component and the averages by component.

This information shall be included in an Excel spreadsheet. See Appendix B for the required format.

#### 3. Marketing Method(s)

A brief description of the marketing method used for the filed form shall be listed. (Agency/Broker, Internet, Direct Sale, Other).

This information shall be included in an Excel spreadsheet. See Appendix B for the required format.

4. Premium Classification

This section shall state all attributes upon which the premium rates vary. Plans may vary premium rates utilizing the following factors when actuarially justified:

- a. Benefit factors;
- b. Family composition (individual or family);
- c. Geographic rating area;
- ~~d. Network factors (if applicable);~~
- ~~ed.~~ Age, ~~except that it may not vary by more than three (3) to one (1) for adults;~~ and
- ~~ef.~~ Tobacco use.

This information shall be included in an Excel spreadsheet. See Appendix B for the required format.

5. Product Descriptions

This section shall describe the benefits provided by the policy, rider or contract.

This information shall be included in the narrative.

6. Policy/Rider or ~~e~~Contract

All policy or contract forms impacted shall be listed on the Form Schedule tab in SERFF.

7. Age Basis

This section shall state that the premiums will be charged on an issue-age basis.

This information shall be included in an Excel spreadsheet. See Appendix B for the required format.

8. Renewability Provision

These policies are not renewable.

B. Assumption, Acquisition or Merger

Identify whether or not the products included in the rate filing are part of an assumption, acquisition or merger of policies from/with another carrier. If so, the memorandum shall include the full name of the carrier(s) from which the policies were assumed, acquired or merged, and the date of the assumption, acquisition or merger, and the SERFF tracking number of the ~~merger,~~ ~~acquisition, or assumption~~ ~~assumption, acquisition or merger~~ rate filing. Commissioner approval of the ~~merger, assumption or acquisition~~ ~~assumption, acquisition or merger~~ of a block of business is

required. See Section 5.B.3.a.(5) for ~~merger, acquisition or assumption~~ ~~assumption, acquisition or merger~~ rate filing requirements.

This information shall be included in the narrative.

C. Rating Period

Identify the period for which the rates will be effective. At a minimum, the proposed implementation date of the rates shall be provided. If the length of the rating period is not clearly identified, it will be assumed to be for twelve (12) months, starting from the proposed implementation date.

Premiums may change throughout the year for trend only and shall not be changed during the contract term, except for changes made by the policyholder.

This information shall be included in the narrative.

D. Underwriting

~~The underwriting manual shall be included in the rate filing on the Supporting Documents tab in SERFF. A description of the factors considered in approving or denying coverage shall be included in the underwriting manual, in addition to any pre-existing limitations. Rates shall not be adjusted due to pre-existing conditions that will be excluded under an issued policy. Short-term limited duration health insurance policies are subject to guaranteed issue requirements of § 10-16-105(1)(a)(I), C.R.S.. Underwriting shall only be used in determining pre-existing conditions that will be excluded under the policy.~~

This information shall be contained in the narrative.

E. Effect of Law Changes

Identify, quantify, and adequately support any changes to the rates, expenses, and/or medical costs that result from changes in federal, state or local law(s) or regulation(s). All applicable mandates shall be listed, including those with no rating impact. This quantification shall include the effect of specific mandated benefits and anticipated changes both individually by benefit, as well as for all benefits combined.

This information shall be contained in the narrative.

F. Rate History

Include a chart showing, at a minimum, any rate changes that have been implemented in the three (3) approvals immediately prior to the filing date, including the implementation date of each rate change. Rate changes shall include the impact of trend.

1. This chart shall contain the following information: the filing number (SERFF tracking number); the implementation date of each rate change; the average increase or decrease in rate; the minimum and maximum rate change and; the cumulative rate change for the past twelve (12) months.
2. The rate history shall be provided on both a Colorado basis, as well as an average nationwide basis, if applicable.

This information shall be provided in an Excel spreadsheet. See Appendix C for the required format.

G. Subrogation

The memorandum shall reflect actual loss experience net of any savings associated with subrogation.

A statement confirming this shall be contained in the narrative.

H. Relation of Benefits to Premium

Carriers shall include all retention from expenses, fees and profits that will be loaded into rates. The memorandum shall adequately support the reasonableness of the relationship of the projected benefits to projected earned premiums for the rating period. The carrier shall comply with the following benefits ratio guidelines:

1. Retention Percentage: The actuarial memorandum shall list and adequately support each specific component of the retention percentage. Carriers shall provide actuarial justification for the retention levels, including a comparison to actual expenses in the most recent financial statements, with an explanation for any variations between retention loads used and actual experience for each component.
2. Carriers shall have, at a minimum, an **eighty percent 60(80%)** loss ratio for short-term policies.

This shall be provided in both the narrative and an Excel spreadsheet. See Appendix D for the required format.

I. Provision for Profit and Contingencies

Carriers shall indicate pre-tax and post-tax levels and shall indicate how investment income has been accounted for in the setting of profit margins. Material, investment income from unearned premium reserves, reserves from incurred losses, and reserves from incurred but not reported losses shall be considered in the ratemaking process. Detailed support shall be provided for any proposed load.

This shall be provided in both the narrative and an Excel Spreadsheet. See Appendix E for the required format.

J. Complete Explanation as to **hH**How the Proposed Rates were Determined

The memorandum shall contain a section with a complete explanation as to how the proposed rates were determined, including all underlying rating assumptions, with detailed support for each assumption. The Division may reject a rate filing if support for any rating assumption is found to be inadequate.

This explanation may be on an aggregate expected loss basis or a per-member-per-month (PMPM) basis, but it shall completely explain how the proposed rates were determined. The memorandum shall adequately support all material assumptions and methodologies used to develop the expected losses or pure premiums.

1. Base Rate

A complete explanation as to how the base rate was developed shall be provided. The base rate shall not include any other factors and shall be adjusted to exclude any benefit, geographic, age or other factors used in calculating the premium. Carriers may utilize actual claims experience in developing the base rate.

The base rate shall be actuarially justified and implemented consistent with state rate review processes.

2. Geographic Area Rating Factors

A complete explanation as to how geographic area rating factors (area factors) were developed shall be provided. Health claims may be used in the process of developing area factors. Area factors shall not reflect differences in enrollee health status. Area factors shall reflect only differences in the costs of delivery and shall not include differences for population morbidity by geographic area. Area factors shall be actuarially justified and verified to have been set based upon the above criteria.

3. Benefit Factors

Benefit factors shall be provided when such factors affect the final rate. A complete explanation as to how benefit factors were developed shall be provided. The benefit factors shall be actuarially supported and the support shall be provided.

4. Morbidity

Other projected population changes from the experience period to the rating period shall include considerations of demographic changes over the course of the year, and the impact of the exclusion of any pre-existing condition. For any morbidity factor used, a complete explanation of development shall be provided.

5. ~~Other Factors~~

~~The memorandum shall clearly display or clearly reference all other rating factors and definitions used, including the area factors, age factors, etc. and provide support for the use of each of these factors in the new rate filing. The same level of support for changes to any of these factors shall be included in all subsequent rate filings. In addition, the Commissioner expects each carrier to review each of these rating factors every five (5) years, at a minimum, and provide detailed support for the continued use of each of these factors in a rate filing. Gender factors shall not be used.~~

This information shall be included in the narrative.

K. Trend

The memorandum shall describe the trend factor assumptions used in pricing. These trend factor assumptions shall be separately discussed, adequately supported, and be appropriate for the specific line of business, product design, benefit configuration, and time period. Any and all factors affecting the projection of future claims shall be presented and adequately supported. Trend factors do not renew automatically, continued use of trend factors shall be supported annually.

1. The four (4) most recent years of monthly experience data used to evaluate historical trends shall be provided if available. This experience may include data from the plan being rated or may include data from other Colorado or national business for similar lines of insurance, product design, or benefit configuration.
2. Provided loss data shall be on an incurred basis, with pharmacy data shown separately from medical data, separately presenting the accrued and unaccrued portions of the liability and reserve (e.g. case, bulk and incurred but not reported (IBNR) reserves) as of

the valuation date. The carrier shall indicate the number of paid claim months of run out used beyond the end of the incurred claims period.

3. The provided claims experience shall include the following separate data elements for each month: actual medical (non-pharmacy) paid on incurred claims; total medical incurred claims (including estimated IBNR claims); actual pharmacy paid on incurred claims; total pharmacy incurred claims (including estimated IBNR claims); average covered lives for medical; and, average covered lives for pharmacy.
4. Data elements shall be aggregated into twelve (12) month annual periods, with yearly "per member, per month" (PMPM) data, and year-over-year PMPM trends listed separately for medical and pharmacy. Annual experiences, PMPMs, trends normalized for changes in demographics, benefit changes, and other factors impacting the true underlying trends shall be identified. The trend assumptions shall be quantified into two (2) categories, medical and insurance, as defined below:
  - a. Medical trend in Appendix F1 (1A to 1F) means, for the purposes of this section, the combined effect of medical provider price increases, utilization changes, medical cost shifting, new medical procedures and technology, and other insurance trend. Medical trend includes changes in unit costs of medical services or procedures, medical provider price changes, changes in utilization (other than due to advancing age), medical cost shifting, and new medical procedures and technology. Insurance trend includes ~~the effect of underwriting wear-off, deductible leveraging, and~~ anti-selection resulting from rate increases and discontinuance of new sales.
  - b. Insurance trend in Appendix F1 (1E) means, for the purposes of this section, the combined effect of any other items impacting medical trend that are not captured in items (1A) through (1D) of Appendix F1, including the ~~effect of deductible leveraging anti-selection resulting from rate increases and discontinuance of new sales, and~~ the impact on trend due to anticipated demographic changes. The components of the medical trend noted as (1A) through (1D) in Appendix F1 shall be determined or assumed before determining the impacts of the other insurance trend items included in (1E), which shall be fully justified in the rate filing.
  - c. Pharmaceutical trend in Appendix F1 (2A to 2F) means, for the purposes of this section, the combined effect of pharmaceutical price increases, pharmacy utilization changes, cost shifting, introduction of new drugs, and other pharmaceutical trend.
  - d. Other pharmaceutical trend in Appendix F1 (2E), means, for the purposes of this section, the combined effect of any other items impacting pharmaceutical rates that are not captured in items (2A) through (2D) of Appendix F1, ~~including the effect of pharmaceutical deductible leveraging.~~
5. Trend factors that directly affect the rates (i.e. rating factors that are applied throughout the rating period) are part of the requested increase. Trend factors of this type shall be reflected anywhere that a requested change is reported (all SERFF Rate/Rule Schedule tab items, rating factors included in the rate pages, Side-by-Side Comparison). Trend factors do not renew automatically and shall be requested annually. Trend factors include inflation factors. Rate filings shall be submitted on an annual basis with adequate support for the continued use of trend factors.

The assumptions shall be presented in the narrative, and the data shall be provided in an Excel spreadsheet. See Appendix F1, Appendix F2 and Appendix F3 for the required format.

6. Rates not on file with the Division, including the continued use of trend factors beyond one year, are deemed to be unfiled rates, which is a violation of Colorado law under § 10-16-107, C.R.S.

This information shall be provided in both the narrative and Excel spreadsheet. See Appendix ~~cesx~~ F1 ~~through~~ F3 for ~~the~~ required format.

#### L. Credibility

The memorandum shall discuss the credibility of the Colorado data; the Colorado standard for fully credible data is 2,000 life years and 2,000 claims. Both standards shall be met within a maximum of three (3) years if the proposed rates are based on claims experience. If the carrier's Colorado data is not fully credible, partial credibility shall be used, with the following guidelines:

1. Partial credibility shall be based on either the number of ~~Life~~ ~~Y~~ years OR the number of claims over a three (3) year period.
2. The formula for determining the amount of partial credibility to assign to the data is the square root of (number of life years/full credibility standard) or the square root of (number of claims/full credibility standard).
3. The proposed rates shall be based upon as much Colorado data as possible. The use of collateral data is only acceptable if the Colorado data does not meet the full credibility standard.
4. The partially-credible Colorado data and collateral data used to support partially-credible data shall be provided. Justification of the use of such data, including published data sources (including affiliated companies), shall be provided.
5. The memorandum shall also discuss how and if the aggregated data meets the Colorado credibility requirement. Any filing which bases its conclusions on partially-credible data shall include a discussion as to how the rating methodology was modified for the partially credible data.

This shall be provided in an Excel spreadsheet. If the full credibility standard is not met, explanations of the use of partially-credible or aggregated data and resulting changes to rating methodology shall be provided in the narrative. See Appendix G for the required format.

#### M. Experience

The memorandum shall include earned premium, loss experience, actual benefits ratio, average covered lives and number of claims submitted on a Colorado-only basis for at least three (3) years.

1. Pharmacy claims data shall be shown separately for incurred claims, actual benefits ratio, number of claims, average covered lives and number of policyholders.
2. National or other relevant data shall be provided to support the rates, if the Colorado data is partially credible. Any rate filing involving an existing product is required to provide this information. This includes, but is not limited to changes in rates, rating factors, rating methodology, trend, new benefit options, or new plan designs for an existing product.
3. If the purpose of the filing is to introduce a new product to Colorado, nationwide experience for this product shall be provided. If no experience from the new product is available, experience from a comparable product shall be provided, including experience data from other carriers that have been used to support the rates.

4. Support for new policy forms shall be provided. If the new policy form is based on an existing policy form, the existing policy form experience shall be used to support the new policy form, with an explanation as to the differences and relativities between the old and new policy form. The offering of additional cost sharing options (i.e. deductibles and copayments) does not change an existing form into a “new product,” as defined in this regulation.
5. Rates shall be supported by the most recent data available, with as much weight as possible placed upon the Colorado experience. Data used to support rates shall be included in the filing. **For both renewal filings and new business filings, t**he experience period shall include consecutive data no older than six (6) months prior to the filing date.
6. The loss data shall be presented on an incurred basis, including the accrued and unaccrued portions of the liability and reserve (e.g. case, bulk and IBNR reserves) as of the valuation date, both separately and combined. Premiums, and/or exposure data, shall be stated on both an actual and on-rate-level basis. Capitation payments shall be considered as claim or loss payments. The carrier shall also provide information on how the number of claims was calculated.

This shall be provided in an Excel spreadsheet. See Appendix H for the required format.

N. Side-by-side Comparison

Each memorandum shall include a “side-by-side comparison” identifying any proposed change(s) in rates. This comparison shall include four (4) columns: the first containing the category, the second containing the current rate, rating factor, or rating variable; the third containing the proposed rate, rating factor, or rating variable; and the fourth containing the percentage increase or decrease of each of the proposed change(s). If the proposed rating factor(s) are new, the memorandum shall specifically state this and provide detailed support for each of the rating factors.

This information shall be provided in an Excel worksheet. See Appendix I for the required format.

O. Benefits Ratio Projections

The memorandum shall contain a section projecting the benefits ratio over the rating period, both with and without the requested changes. The comparison shall be shown in chart form, listing projected premiums, projected incurred claims, and projected benefits ratio over the rating period, both with and without the requested change. The corresponding projection calculations shall be included.

If the filing is for new product, the expected projected premiums and projected incurred claims shall be provided.

This information shall be provided in Excel spreadsheet. See Appendix J for the required format.

P. Rating Manuals

A rating manual shall be submitted to the Division for each new product. All changes to the rating manual shall be filed with the Division in an appropriate rate filing. Rate pages and rate manual shall be attached to the Rate/Rule Schedule tab in SERFF.

Q. Actuarial Certification



An actuarial certification shall be submitted with all filings. An actuarial certification is a signed and dated statement made by a qualified actuary which attests that, in the actuary's opinion, the rates are not excessive, inadequate, or unfairly discriminatory.

## Section 7 Premium Rate Setting

### A. Calculating Premium Rates Adjusted for Case Characteristics

#### 1. Base Rate

Each carrier offering a short-term limited duration health insurance policy to individuals in Colorado shall develop a single base rate for all individual short-term policies it offers. The base rate shall be based on:

- a. The claims experience of all enrollees in all short-term policies in the risk pool.
- b. The premium rate charged during a rating period shall be based upon this base rate, adjusted for case characteristics and coverage as allowed in this section.

#### 2. Benefit Design Adjustment

The base rate may be adjusted to reflect differences attributable to different benefit designs. Differences in the rates for different benefit plans, for persons with the same case characteristics of age, geographic location and family size, shall be attributable to benefit design only. Using this methodology, a carrier's rates for a plan with leaner benefits shall be lower than the rates for a plan with more benefits.

#### 3. Acceptable Case Characteristics Factor Categories

- a. Carriers shall adjust premiums only for the following factors: self-only or family enrollment, geographic area, age, **network factors** and tobacco.
- b. Rates may vary based on whether a plan covers an individual or a family. The rating variation permitted for age and tobacco use shall be applied based on the portion of the premium attributable to each family member covered under a policy.
- c. Age and tobacco use factors shall be apportioned to each family member.
- d. Geographic area rating factors shall not vary by benefit selections; there shall only be one (1) set of area factors for each rate filing. Geographic area rating factors are separate from network factor rating adjustments and may not vary by network.

**Carriers may establish geographic regions. Actuarial support shall be submitted for any factors presented.**

**For example, a particular carrier's geographic area rating factors might be:**

Geographic Area	Rating Factor
Boulder MSA	0.89
Denver MSA	1.03
Greeley MSA	0.98
Colorado Springs MSA	1.02

Fort Collins MSA	1.01
Grand Junction MSA	0.95
Pueblo MSA	1.05
East Non-MSA	1.27
West Non-MSA	0.99

The Denver area factor does not have to be set to 1.0. Carriers typically scale their area factors so that they are revenue neutral when applied within their rating formulas. Health claims may be used in the process of developing area factors. Rating factors must not reflect differences in member health status. Area factors must be actuarially justified and verified to have been set based upon the above criteria.

**Geographic Location:** If a carrier uses geographic location to calculate rates, then it shall use the nine (9) mandatory categories in the following table.

Rating Area	County
Rating Area 1	Boulder
Rating Area 2	El Paso, Teller
Rating Area 3	Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, Park
Rating Area 4	Larimer
Rating Area 5	Mesa
Rating Area 6	Weld
Rating Area 7	Pueblo
Rating Area 8 (East)	Alamosa, Baca, Bent, Chaffee, Cheyenne, Conejos, Costilla, Crowley, Custer, Fremont, Huerfano, Kiowa, Kit Carson, Las Animas, Lincoln, Logan, Mineral, Morgan, Otero, Phillips, Prowers, Rio Grande, Saguache, Sedgwick, Washington, Yuma
Rating Area 9 (West)	Archuleta, Delta, Dolores, Eagle, Garfield, Grand, Gunnison, Hinsdale, Jackson, La Plata, Lake, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, San Juan, San Miguel, Summit

For a small employer in Colorado, the applicable area factor for each employee is based on the principal business location of the small employer, rather than the residence of each employee.

For an individual policy, the applicable area factor applied to rates for each member is based on the location of the primary policyholder rather than the residence of each family member.

- e. Age factors and age bands shall be determined based on an enrollee's age on the date of policy issuance. For individuals who are added to the policy on a date

other than the date of policy issuance, the enrollee's age is determined as of the date such individuals are added or enrolled in the coverage.

Carriers may establish age factors and age bands that differ from other lines of business. Adequate support shall be provided for any age factors and age bands.

**f. Network Factors**

~~Network factors shall only be used when two (2) or more networks are associated with short-term policies. When an enrollee does not have a choice of network(s), carriers shall not apply a network factor.~~

**gf. Tobacco Use Rate**

- (1) Carriers may vary tobacco rating by age (for example, a younger enrollee may be charged a lower tobacco use rate than an older enrollee) provided the tobacco use rate does not exceed the non-tobacco use rate contained in § 10-16-107(5)(a)(I)(D), C.R.S.
- (2) Carriers may remove the tobacco rating factor for individuals participating in a wellness program.
- (3) "Tobacco use" is defined, for the purposes of this section, as the use of a tobacco product or products four (4) or more times per week within, but no longer than, the past six (6) months by legal users of tobacco products (generally those 18 years and older). It includes all tobacco products and does not include religious or ceremonial uses of tobacco (for example, by American Indians and Alaska Natives). Tobacco use shall be defined by carriers in terms of the time since the individual's last use of a tobacco product.

~~B. The rating period for all plans shall be no more than twelve (12) months.~~

**GB.** Base rates shall not be adjusted more frequently than monthly.

**DC.** Carriers shall not vary the rates for any reason during the term of the contract, except for the following:

1. Changes in the family composition;
2. Changes in the geographic area of the policyholder;
3. Changes in tobacco use;
4. Changes to the plan requested by the policyholder; and/or
5. Other changes required by federal law or regulations or otherwise expressly permitted by state law or **EC** Commissioner rule.

**ED.** Administrative and Other Fees

Separate administrative, processing, enrollment, and other special charges are prohibited. Reasonable late payment penalties may be imposed by a carrier if the policy discloses the carrier's right to, the amount of, and circumstances under which late payment penalties will be imposed.

**FE.** Cost Sharing Limitation

Plans may set a limit on cost sharing (commonly referred to as a maximum out-of-pocket limit) as part of the benefits package offered.

**GF.** Benefit Factor Adjustments to the Base Rate

The adjusted base rate as developed from the process in Section 6.J.1. may be modified for each plan characteristic by reflecting benefit cost adjustments due to selection of different plan options. Differences in the plan options for persons with the same case characteristics of age, geographic location, family size, and tobacco use shall be attributable to plan design only. Benefit factors shall not reflect the health status of enrollees assumed to be enrolled in any particular benefit option and shall not reflect claims experience of enrollees on a similarly selected plan. The benefit cost relativity between plan options shall only reflect the true benefit differences due to different enrollee cost-sharing levels and plan design features. Using this method, a carrier's benefit factor for a plan design relative to the benefit factor for a leaner (richer) plan design shall be lower (higher).

**HG.** Retention Factor Adjustments to the Base Rate

1. Carriers shall adjust the base rate to include all retention from expenses, fees and profits that will be loaded into rates. Retention loads shall be spread out across all rates in the short-term policies using the same rating factor(s).
2. At the minimum, carriers shall provide actuarial justification for the retention levels, including a comparison to actual expenses in the most recent financials, and identify and justify loads by specific retention components that include at least the following:
  - a. Administrative expenses;
  - b. Commissions and other acquisition expenses (may be separated);
  - c. Taxes;
  - d. Other assessments; and
  - e. Profit and contingencies.

**I. Network Factor Adjustments**

1. The adjusted base rate may be modified to reflect cost differences between different provider networks. Network factors may not be developed to reflect health status or claims experience of enrollees included in the different networks. Factors shall be set assuming each network has the same average enrollee risk profile and levels of enrollee health. Therefore, claims experience may not be directly used as the basis for setting a network factor. Network factors shall reflect the following estimated cost differences between networks:

- a. Differences in reimbursement levels and discounts between providers;
- b. Differences in the utilization management of enrollees, including tighter control of referrals, stricter managed care, disease management and wellness programs, etc.;
- c. Other delivery system characteristics of a network; and

2. ~~Plan level network factor adjustments for any plan design and network may not vary by geographic area.~~

3. ~~Carriers shall provide a table showing the network factor for each network available for selection in the rate manual.~~

#### JH. ~~State Mandated~~Required Health Benefits

As short-term policies meet the definition of health benefit plans pursuant to § 10-16-102(32), C.R.S., except the requirement to cover pre-existing conditions, they are required to provide coverage of the applicable mandated benefits pursuant to § 10-16-104, C.R.S. ~~and the essential health benefits, found at § 10-16-102(22)(b), C.R.S.~~

### Section 8 Rate Filings

- A. The provisions of § 10-16-107, C.R.S. and this regulation shall apply to the filing of rates for short-term limited duration health insurance policies. Expected rate increases for short-term policies shall be submitted for approval to the Division of Insurance at least sixty (60) days prior to the proposed rate implementation date.
- B. Filings for short-term policies shall not be combined with any other filing. Additionally, they shall be filed separately by type of coverage (indemnity, preferred provider organization, or health maintenance organization).
- C. Rates shall be filed no less frequently than annually.

### Section 9 Prohibited Rating Practices

The Commissioner has determined ~~that, in accordance with § 10-16-107, C.R.S., certain that the following~~ rating ~~practices activities~~ lead to excessive, inadequate or unfairly discriminatory rates, ~~and are unfair methods of competition and/or unfair or deceptive acts or practices in the business of insurance. Therefore, in accordance with § 10-16-107, C.R.S., the following and~~ are prohibited:

- A. Premium schedules where the slope by age is substantially different from the slope of the ultimate claim cost curve. However, this requirement is not intended to prohibit use of a premium schedule which provides for premiums to a specific age followed by a level premium, or the use of reasonable step rating;
- B. The use of premium modalization factors which implicitly or explicitly increase the premium to the consumer by any amount other than those amounts necessary to offset reasonable increases in actual operating expenses that are associated with the increase number of billings and/or the loss of interest income; ~~and~~
- C. Pursuant to § 10-16-107(2)(b), C.R.S., short-term policy rates shall not vary due to the gender of the individual policyholder, enrollee, subscriber, or member.
- ~~D. The use of any rating factors based upon zip codes which fail to equitably adjust for different expectations of loss. It is the expectation of the Commissioner that areas of the state with like expectations of loss shall be treated in a similar manner. Also, policyholders utilizing the same provider groups shall be rated in a like manner. The use of zip codes in determining rating factors can result in inequities. Unless different rating factors can be justified based upon different provider groups or other actuarially sound reasons, the following guidelines shall be followed whenever zip codes are used in determining a carrier's rating factors:~~

1. All zip codes in the 800-802 three-digit zip code groups are considered part of the Denver metropolitan areas and shall receive the same rating factor, with the following possible exceptions:
  - a. The following zip codes in Elbert County: 80101, 80106, 80107, 80117;
  - b. The following zip codes in Arapahoe County: 80102, 80103, 80105, 80136
  - c. The following zip codes in El Paso County: 80132, 80133;
  - d. The following zip codes in Boulder County: 80025, 80026, 80027, 80028.
2. In addition, the following zip codes outside the 800-802 three-digit zip code groups are considered part of the Denver metropolitan area and shall receive the same rating factor as the 800-802 three-digit zip code groups:
  - a. The following zip codes in Jefferson County: 80401-80403, 80419, 80433, 80437, 80439, 80453, 80454, 80457, 80465; and
  - b. The following zip codes in Adams County: 80614, 80640.
3. All zip codes in the 809 three-digit zip code group are considered part of the Colorado Springs metropolitan area and shall receive the same rating factor. In addition, the following zip codes in El Paso County, which lie outside the 809 three-digit zip code group shall be considered part of the Colorado Springs metropolitan area and shall receive the same rating factor as the 809 three-digit zip code group: 80809, 80817, 80819, 80829, 80831, 80840, and 80841.

If a carrier uses area rating factors which are based in whole or in part upon the zip code, and does not follow these guidelines, the carrier may be found to have rates that are unfairly discriminatory. The Commissioner expects carriers to review the appropriateness of area factors at least every five (5) years and provide detailed support for the continued use of the factors in rate filings and upon request.

## **Section 10      Severability**

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

## **Section 11      Enforcement**

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

## **Section 12      Effective Date**

This regulation shall become effective on September-April 1, 2019<sup>98</sup>.

## **Section 13      History**

New regulation effective September 1, 2018.

Amended regulation effective April 1, 2019.

## APPENDIX A

### **RATE FILING REQUIREMENTS FOR SHORT-TERM LIMITED DURATION HEALTH INSURANCE POLICIES**

- A. Format: All required reports and documentation shall be submitted through SERFF in a searchable PDF format. All tables identified in Section 6 of this regulation shall also be submitted in an Excel format (in addition to the searchable PDF).
- B. Submission Requirements for New Rate Filings: Carriers shall complete and submit the following information in SERFF in order for a rate filing submission to be considered complete:
  - 1. Carriers shall complete all SERFF required data fields.
  - 2. Carriers shall list all forms associated with the rate filing under the Form Schedule Tab.
    - a. Carriers shall complete all data fields (Form Name, Form Number, Form Type, Action) under this tab.
    - b. Carriers shall not attach copies of the actual form documents as part of a rate filing.
  - 3. Carriers shall attach a copy of the Rate Tables/Manual under the Rate/Rule Schedule Tab.
  - 4. Carriers shall attach copies of the following documents under the Supporting Documentation Tab in the Filing (Non-Binder) section in SERFF:
    - a. If a carrier uses a third party to submit a rate filing on its behalf, a Letter of Authority shall be attached under the Supporting Documentation tab in SERFF.
    - b. A copy of the Colorado **Aa**ctuarial **Mm**emorandum, which includes all elements contained in Section 6 of this regulation.
- c. Any applicable justification or attestations forms specified by the Division.

## APPENDIX B: SUMMARY

Summary		
<b>1. Reason(s):</b>	Provide a narrative describing the exact reasons for the filing.	
<b>2. Requested Rate Action (Enter the percentage for each factor changing):</b>		Base Rate Change
		Age
		Area Factor Change
		Benefit Factor Change
		Family Composition
		Tobacco
		Trend
		Other (Please Specify):
<b>3. Overall Rate Action:</b>		Average Total Change
		Minimum
		Maximum
<b>4 <input type="checkbox"/> Marketing Method(s) (Select all that apply):</b>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>		Agency / Broker
		Internet
		Direct Sale
		Other (Please Specify):
<b>5 <input type="checkbox"/> Premium (Select all that apply):</b>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>		Age
		Family Composition
		Tobacco
		Geographic Area
		Benefit
		Other (Please Specify):
<b>6. Product Description(s):</b>	Provide a narrative describing the benefits.	



<b>7. Policy/Rider Impacted</b>	Complete the Form Schedule Tab with all applicable policy and/or contract forms affected.		
<b>8 <input type="checkbox"/> Age Basis (Select all that apply):</b>  <input type="checkbox"/>  <input type="checkbox"/>		Issue Age	
		Not Utilized	
		Other (Please Specify):	
<b>9 <input type="checkbox"/> Renewability Provision (<del>Select all that apply</del>):</b>		Non-Renewable	

## APPENDIX C: RATE HISTORY

RATE HISTORY					
Provide rate changes made in at least the last three (3) approved filings (If available)					
<input type="checkbox"/> N/A New Filing					
<b>COLORADO</b>					
		<b>% OF CHANGE</b>			
<b>SERFF Tracking Number</b>	<b>Implementation Date</b>	<b>Minimum</b>	<b>Average</b>	<b>Maximum</b>	<b>Cumulative for past 12 Months</b>
<b>NATIONWIDE</b>					
<b>Implementation Date</b>	<b>Average % of change</b>	<b>Cumulative for past 12 Months</b>			

<b>Additional Information:</b>					

#### Appendix D: Relation of Benefits to Premium

Relation of Benefits to Premium	
Description	Percentage
(1) Commissions	
(2) General Expenses	
(3) Premium Taxes	
(4) Pre-Tax Profit/Contingencies	
(5) Investment Income (express as a negative number)	
(6) Other	
(7) Total Retention (1+2+3+4+5+6)	
Targeted Loss Ratio [(1-(7))]	

**APPENDIX E: PROVISION FOR PROFIT AND CONTINGENCIES**

<b>Provision for Profit and Contingencies</b>	
(1) Post-Tax Provision for Profit and Contingencies	
(2) Investment Income (expressed as a negative number)	
(3) Federal Income Tax	
(4) Pre-tax Profit and Contingencies, including Investment Income* (4) = (1) – (2) + (3)	

\*Equal to line (4) from previous table – Relation of Benefits to Premium

**APPENDIX F1: TREND**

<b>TREND</b>	
<b>MEDICAL TREND</b>	<b>Trend (%)</b>
(1A) Medical provider price increase	
(1B) Utilization changes	
(1C) Medical cost shifting	
(1D) Medical procedures and new technology	
(1E) Other Insurance Trend	
(1F) Medical Trend (Total Product of (1A) - (1E))	
<b>PHARMACEUTICAL TREND (IF APPLICABLE)</b>	
(2A) Price increases	
(2B) Utilization changes	
(2C) Cost shifting	
(2D) Introduction of new brand and generic drug	
(2E) Other Pharmaceutical Trend	
(2F) Pharmaceutical Trend (Total Product of (2A) - (2E))	
<b>TOTAL AVERAGE ANNUALIZED TREND (1F) and (2F) weighted proportionately by the mix of carrier's business</b>	

## APPENDIX F2: MONTHLY HISTORICAL TREND

[illegible]

[illegible]



[illegible]

45													
46													
47													
48													

		Medical			Pharmacy			One Year Trends					
Start Month	End Month	Total Member Months	Total Incurred Claims	Estimated IBNR Claims	Total Member Months	Total Incurred Claims	Estimated IBNR Claims	Medical		Pharmacy		Total	
								PMPM	Trend	PMPM	Trend	PMPM	Trend
Three Year Annualized Trend													

## APPENDIX F3: MONTHLY NORMALIZED TREND

[illegible]

[illegible]

[illegible]

45													
46													
47													
48													

		Medical			Pharmacy			One Year Trends					
Start Month	End Month	Total Member Months	Total Incurred Claims	Estimated IBNR Claims	Total Member Months	Total Incurred Claims	Estimated IBNR Claims	Medical		Pharmacy		Total	
								PMPM	Trend	PMPM	Trend	PMPM	Trend
Three Year Annualized Trend													

# APPENDIX G: CREDIBILITY

<b>Credibility</b>				
<b>1. Credibility Calculation</b>				
<b>Colorado Experience:</b>		<b>Other Experience:</b>		
<b>Life Years</b>		<b>Life Years</b>		
<b>Number of Claims</b>		<b>Number of Claims</b>		
		<b>Above data is for (please specify):</b>		
		National		
		Manual Rate (please specify)		
		Other Product (please specify)		
<b>Colorado Credibility Weighting Assigned</b>				
<b>Other Experience Credibility Weighting Assigned</b>				
<b>2. Number of years of data used to calculation above credibility percentage:</b>		<input type="checkbox"/> 1 Year <input type="checkbox"/> 2 Years <input type="checkbox"/> 3 Years		
<b>3. Provide a narrative if aggregated data meets the Colorado credibility requirement and how the rating methodology was modified for the partially credible data, if applicable.</b>				

## APPENDIX H: EXPERIENCE

EXPERIENCE							
Colorado-only basis for at least 3 years. <b>Include</b> national, regional or other appropriate basis, if the Colorado data is not fully credible. The experience period shall include consecutive data no older than 6 months prior to the proposed effective date.							
COLORADO MEDICAL EXPERIENCE							
Experience is for:	<input type="checkbox"/> Existing Product		<input type="checkbox"/> Comparable Product		<input type="checkbox"/> Other		
Year*	Earned Premium	Incurred Claims	Estimated IBNR Claims	Total Estimated Incurred Claims	Loss Ratio	Average Covered Lives	Number of Claims
20xx							
20xx							
20xx							
20xx							

\*This column should be Calendar Year. If fractional year is used, identify period as MM/YYYY – MM/YYYY



COLORADO MEDICAL FOR EXPERIENCE PERIOD USED IN SETTING RATES									
Date		Paid Through Date	Earned Premium	Incurred Claims	Estimated IBNR Claims	Total Estimated Incurred Claims	Loss Ratio	Average Covered Lives	Number of Claims
From	To								
Blocks of Business Included in Experience:									

COLORADO PHARMACY EXPERIENCE							
Experience is for:	<input type="checkbox"/> Existing Product		<input type="checkbox"/> Comparable Product		<input type="checkbox"/> Other		
Year*	Earned Premium**	Incurred Claims	Estimated IBNR Claims	Total Estimated Incurred Claims	Loss Ratio	Average Covered Lives	Number of Claims
20xx							
20xx							
20xx							
20xx							
*This column should be Calendar Year. If fractional year is used, identify period as MM/YYYY – MM/YYYY							

### COLORADO TOTAL EXPERIENCE

<b>Experience is for:</b>	<input type="checkbox"/> Existing Product	<input type="checkbox"/> Comparable Product	<input type="checkbox"/> Other				
Year*	Earned Premium**	Incurred Claims	Estimated IBNR Claims	Total Estimated Incurred Claims	Loss Ratio	Average Covered Lives	Number of Claims
20xx							
20xx							
20xx							
20xx							

\*This column should be Calendar Year. If fractional year is used, identify period as MM/YYYY – MM/YYYY

### COLORADO TOTAL FOR EXPERIENCE PERIOD USED IN SETTING RATES

Date		Paid Through Date	Earned Premium	Incurred Claims	Estimated IBNR Claims	Total Estimated Incurred Claims	Loss Ratio	Average Covered Lives	Number of Claims
From	To								
<b>Blocks of Business Included in Experience:</b>									

	OTHER EXPERIENCE						
Experience is for:	<input type="checkbox"/> Existing Product	<input type="checkbox"/> Comparable Product	<input type="checkbox"/> National	<input type="checkbox"/> Other	(Check all that apply)		
Year	Earned Premium	Incurred Claims	Total Estimated Incurred Claims	Total Estimated IBNR Claims	Loss Ratio	Average Covered Lives	Number of Claims
20xx							
20xx							
20xx							
20xx							
Experience Period:	From:		To:				
Additional Information:							

\*\*If pharmacy premium cannot be calculated separately from medical premium leave the pharmacy premium blank.

## APPENDIX I: SIDE-BY-SIDE COMPARISON

O. SIDE-BY-SIDE COMPARISON			
If the proposed rating factor(s) are new, the memorandum shall specifically so state, and provide detailed support for each of the factors.		<input type="checkbox"/> N/A New Product	
Category Description	Current Rate/ Rating Factor/ Rating Variable	Proposed Rate/ Rating Factor/Rating Variable	Percentage Increase/ Decrease
If the above table is not used, please identify the location of the Side-by-Side Comparison in the rate filing:			
Description and detailed support for new rating factor(s):			
Additional Information:			

**APPENDIX J: PROJECTED BENEFITS RATIO**

PROJECTED EXPERIENCE FOR RATING PERIOD			
	Premiums (1)	Incurred Claims (2)	Benefits Ratio (2 / 1)
Projected Experience Without Rate Change			
Projected Experience With Rate Change			
Additional Information:			

# Notice of Proposed Rulemaking

**Tracking number**

2018-00597

**Department**

700 - Department of Regulatory Agencies

**Agency**

702 - Division of Insurance

**CCR number**

3 CCR 702-4 Series 4-2

**Rule title**

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

**Rulemaking Hearing****Date**

12/03/2018

**Time**

02:00 PM

**Location**

1560 Broadway, Ste 110 D, Denver CO 80202

**Subjects and issues involved**

4-2-61 CONCERNING NON-CONTRACTED EMERGENCY ROOM CLAIMS - The purpose of this regulation is to establish requirements for carriers to provide in-network cost-sharing for out-of-network emergency room claims and prohibit carriers from limiting coverage for emergency services to only in-network facilities, pursuant to § 10-16-704(5.5), C.R.S. Further, this regulation seeks to address the issue of provider contracting practices and how non-participation in carrier networks may lead to increased premiums and increase the cost of care.

**Statutory authority**

10-1-109 and 10-16-109, C.R.S.

**Contact information****Name**

Christine Gonzales-Ferrer

**Title**

Rulemaking Coordinator

**Telephone**

303-894-2157

**Email**

christine.gonzales-ferrer@state.co.us

# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance

### 3 CCR 702-4

#### LIFE, ACCIDENT AND HEALTH

##### Proposed New Regulation 4-2-61

##### CONCERNING NON-CONTRACTED EMERGENCY ROOM CLAIMS

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Definitions
Section 5	Rules
Section 6	Severability
Section 7	Enforcement
Section 8	Effective Date
Section 9	History

##### **Section 1 Authority**

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

##### **Section 2 Scope and Purpose**

The purpose of this regulation is to establish requirements for carriers to provide in-network cost-sharing for out-of-network emergency room claims and prohibit carriers from limiting coverage for emergency services to only in-network facilities, pursuant to § 10-16-704(5.5), C.R.S. Further, this regulation seeks to address the issue of provider contracting practices and how non-participation in carrier networks may lead to increased premiums and increase the cost of care.

##### **Section 3 Applicability**

This regulation applies to all carriers offering managed care plans that provide any benefits with respect to services obtained in an emergency department of a hospital.

##### **Section 4 Definitions**

- A. "Carrier" shall have the same meaning as found at § 10-16-102(8), C.R.S.
- B. "Cost-sharing requirements" mean, for the purposes of this regulation, in-network copays, deductibles, co-insurance, and out-of-pocket maximums.
- C. "Emergency medical condition" shall have the same meaning as found at § 10-16-704(5.5)(b)(I), C.R.S.
- D. "Emergency services" shall have the same meaning as found at § 10-16-704(5.5)(b)(II), C.R.S.

##### **Section 5 Rules**

- A. Carriers shall apply the same cost-sharing requirements to emergency services provided at in-network facilities and out-of-network facilities.
- B. Carriers shall ensure that coverage is not limited for emergency services provided at an out-of-network facility and that coverage is provided at no greater cost to the covered person than if the emergency services were provided at an in-network facility.
- C. The explanation of benefits issued by the carrier shall:
  - 1. Provide the covered person with information regarding how the allowable amount was calculated or with specific instructions regarding how to obtain that information from the carrier;
  - 2. Include specific information regarding the covered person's financial responsibility for any applicable in-network cost-sharing amounts; and
  - 3. Include specific instructions for contacting the carrier if any out-of-network provider bills the covered person for amounts in excess of those specified in section 5.C.2.
- D. Nothing in this Section 5 prevents a carrier from negotiating a lower reimbursement amount prior to submitting payment for emergency services, or prevents providers from accepting reasonable reimbursement, such as a percent of billed charges, for the emergency services provided.

## **Section 6 Severability**

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

## **Section 7 Enforcement**

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

## **Section 8 Effective Date**

This regulation shall become effective on January 1, 2020.

## **Section 9 History**

New regulation effective January 1, 2020.



# Notice of Proposed Rulemaking

**Tracking number**

2018-00598

**Department**

700 - Department of Regulatory Agencies

**Agency**

702 - Division of Insurance

**CCR number**

3 CCR 702-4 Series 4-2

**Rule title**

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

**Rulemaking Hearing****Date**

12/03/2018

**Time**

02:00 PM

**Location**

1560 Broadway, Ste 110 D, Denver CO 80202

**Subjects and issues involved**

4-2-18 CONCERNING THE METHOD OF CREDITING AND CERTIFYING CREDITABLE COVERAGE FOR PRE-EXISTING CONDITIONS - Repeal as federal regulation upon which the regulation is based have been repealed, removing the need for this regulation.

**Statutory authority**

10-1-109(1), 10-16-109, C.R.S., and 10-16-118(1)(b), C.R.S. (2012).

**Contact information****Name**

Christine Gonzales-Ferrer

**Title**

Rulemaking Coordinator

**Telephone**

303-894-2157

**Email**

christine.gonzales-ferrer@state.co.us

# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance

3 CCR 702-4

### LIFE, ACCIDENT AND HEALTH

#### **Proposed Repeal Amended Regulation 4-2-18**

#### **CONCERNING THE METHOD OF CREDITING AND CERTIFYING CREDITABLE COVERAGE FOR PRE-EXISTING CONDITIONS**

##### **Section 1 Authority**

Section 2 Scope and Purpose

Section 3 Applicability

Section 4 Definitions

Section 5 Rules

Section 6 Severability

Section 7 Incorporated Materials

Section 8 Enforcement

Section 9 Effective Date

Section 10 History

##### **Section 1 Authority**

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109(1), 10-16-109, C.R.S., and 10-16-118(1)(b), C.R.S. (2012).

##### **Section 2 Scope and Purpose**

The purpose of this regulation is to establish the method grandfathered health benefit plans must use to credit and certify creditable coverage for purposes of limiting pre-existing condition exclusion periods, as required by § 10-16-118(1)(b), C.R.S. (2012).

##### **Section 3 Applicability**

This amended regulation shall apply to all certificates of creditable coverage issued on or after January 1, 2014.

##### **Section 4 Definitions**

A. "Creditable coverage" shall have the same meaning as found at §10-16-102(16), C.R.S. "Individual", as used in this regulation, means a person age nineteen years and older.

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

C. "Significant break in coverage" means a period of consecutive days during all of which the individual does not have any creditable coverage, except that neither a waiting period nor an affiliation period is taken into account in determining a significant break in coverage. For plans subject to the jurisdiction of the Colorado Division of Insurance (Division), a significant break in coverage consists of more than ninety (90) consecutive days. For all other plans (i.e., those not subject to the jurisdiction of the Division, a significant break in coverage may consist of as few as sixty-three (63) days.)

## Section 5 Rules

### A. Application of federal laws concerning creditable coverage:

1. The method for crediting and certifying creditable coverage for purposes of limiting pre-existing condition exclusion periods, as required by § 10-16-118(1)(b), C.R.S. (2012), shall be as set forth in the federal regulations incorporated by reference into this regulation.
2. Where Colorado law exists on the same subject and has different requirements that are not pre-empted by federal law, Colorado law shall prevail.

### B. Colorado law concerning creditable coverage:

1. The method for crediting and certifying creditable coverage described in this regulation shall apply to both group and individual grandfathered health benefit plans that are subject to § 10-16-118(1)(b), C.R.S. (2012)
2. Colorado law requires health coverage plans to waive any exclusionary time periods applicable to pre-existing conditions for the period of time an individual was previously covered by creditable coverage, provided there was no significant break in coverage, if such creditable coverage was continuous to a date not more than ninety (90) days prior to the effective date of the new coverage. Colorado law prevails over the federal regulations.
3. Application of the rules regarding breaks in coverage can vary between issuers located in different states, and between fully insured plans and self-insured plans within a state. The laws applicable to the grandfathered health benefit plan that has the pre-existing condition exclusion will determine which break rule applies.
4. Colorado law does not require a specific format for certificates of creditable coverage as long as all of the information required by 45 C.F.R. 146.115(a)(3), or 45 C.F.R. 148.124(b)(2), as appropriate, is included. However, any health coverage plan subject to the jurisdiction of the Division must issue certificates of creditable coverage that reflect the definition of a "significant break in coverage" found in section 4.C. of this regulation.

### C. Pre-existing condition exclusion period for group health benefit plans:

Colorado law prohibits grandfathered group health benefit plans from imposing a pre-existing condition limitation period.

## **Section 6 — Severability**

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

## **Section 7 — Incorporated Materials**

45 CFR § 146.115 published by the Government Printing Office shall mean 45 CFR § 146.115 as published on the effective date of this regulation and does not include later amendments to or editions of 45 CFR § 146.115. A copy of 45 CFR § 146.115 may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of the 45 CFR § 146.115 may be requested from the Rulemaking Coordinator, Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at [www.ecfr.gov](http://www.ecfr.gov).

45 CFR § 148.124(b) published by the Government Printing Office shall mean 45 CFR § 148.124(b) as published on the effective date of this regulation and does not include later amendments to or editions of 45 CFR § 148.124(b). A copy of 45 CFR § 148.124(b) may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of the 45 CFR § 148.124(b) may be requested from the Rulemaking Coordinator, Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at [www.ecfr.gov](http://www.ecfr.gov).

## **Section 8 — Enforcement**

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

## **Section 9 — Effective Date**

This amended regulation is effective on January 1, 2014.

## **Section 10 — History**

Originally issued as Emergency Regulation 97-E-6, effective July 31, 1997.  
Issued as Regulation 4-2-18, effective October 30, 1997.  
Amended, effective November 1, 1999.  
Amended, effective October 1, 2004.  
Amended regulation effective March 1, 2012.  
Amended regulation effective January 1, 2014.  
Repealed regulation effective February 1, 2019.

# Notice of Proposed Rulemaking

**Tracking number**

2018-00599

**Department**

700 - Department of Regulatory Agencies

**Agency**

702 - Division of Insurance

**CCR number**

3 CCR 702-4 Series 4-2

**Rule title**

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

**Rulemaking Hearing****Date**

12/03/2018

**Time**

02:00 PM

**Location**

1560 Broadway, Ste 110 D, Denver CO 80202

**Subjects and issues involved**

4-2-52 NSURER SPECIAL FEE ASSESSMENTS FOR THE COLORADO HEALTH BENEFIT EXCHANGE - Repeal as state statute upon which the regulation is based has expired, so regulation is no longer needed

**Statutory authority**

10-1-109 and 10-22-109(3), C.R.S.

**Contact information****Name**

Christine Gonzales-Ferrer

**Title**

Rulemaking Coordinator

**Telephone**

303-894-2157

**Email**

christine.gonzales-ferrer@state.co.us

# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance 3 CCR 702-4

### LIFE, ACCIDENT AND HEALTH

#### **Proposed Repeal** Regulation 4-2-52

#### INSURER SPECIAL FEE ASSESSMENTS FOR THE COLORADO HEALTH BENEFIT EXCHANGE

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Definitions
Section 5	Insurer Reporting
Section 6	Special Fee Assessment
Section 7	Notice and Collection of Assessed Fees
Section 8	Severability
Section 9	Enforcement
Section 10	Effective Date
Section 11	History
Appendix A	Monthly Total Number of Lives Insured Reporting Form

#### **Section 1** — Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109 and 10-22-109(3), C.R.S.

#### **Section 2** — Scope and Purpose

The purpose of this regulation is to establish rules governing the assessment and collection of fees necessary to assist in the funding of the Colorado Health Benefit Exchange.

#### **Section 3** — Applicability

This regulation shall apply to all insurers and carriers that are assessed special fees by the Exchange pursuant to state law.

#### **Section 4** — Definitions

A. "Calendar year" means, for the purpose of this regulation, a year beginning on January 1 and ending on December 31.

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

C. "Exchange" shall have the same meaning as found at § 10-22-103(3), C.R.S.

D. "Group health plan" shall have the same meaning as found at § 10-22-103(5), C.R.S.

E. "Health benefit plan" shall have the same meaning as found at § 10-22-103(6), C.R.S.

F. "Insurer" shall have the same meaning as found at § 10-22-103(7), C.R.S., and shall include, for the purposes of this regulation, carriers.

G. "Number of lives insured" means, for the purpose of this regulation, the total number of employees and retired employees in the group market and the total number of individual policies in the individual market (excluding spouses and dependents) enrolled in a health plan who are residents of Colorado and whose plans are regulated by the Colorado Division of Insurance; and the total number of employees and retired employees who are residents of Colorado for whom a premium is paid and coverage is provided under an excess loss, stop loss or reinsurance policy issued by such insurer to an employer or group health plan whose plans are regulated by the Colorado Division of Insurance.

## **Section 5 — Insurer Reporting**

A. No later than May 1 of each year, each insurer shall provide a report to the Exchange that includes:

1. The total number of employees, retired employees and individual policyholders and/or subscribers in the individual and group markets enrolled in all of its health benefit plans who are residents of this state and whose plans are regulated by the Colorado Division of Insurance as of March 1 of calendar year in which the special fee assessment is being determined; and
2. The number of employees and retired employees who are residents of this state for whom a premium is paid and coverage is provided under an excess loss, stop loss or reinsurance policy regulated by the Colorado Division of Insurance and issued by such insurer to an employer or group health plan as of March 1 of calendar year in which the special fee assessment is being determined.

B. The report shall not include any employees, retired employees or individual policyholders and/or subscribers who receive health benefits through Medicare, Medicaid, the Children's Basic Health Plan (pursuant to article 8 of title 25.5, C.R.S.), or the Federal Employees Health Benefit Plans.

C. Insurers providing stop loss, excess loss or reinsurance are permitted to exclude from their annual report those employees, retired employees, or individual policyholders or subscribers who have been counted by the primary insurer or primary reinsurer.

D. Insurers shall provide the Exchange the monthly total number of lives insured on a quarterly basis utilizing the form found in Appendix A of this regulation. The total monthly number of lives insured shall reflect the total number of lives insured on the last day of each month. The number of total lives insured shall be provided to the Exchange no later than thirty (30) days after the end of the quarter. The monthly total number of lives insured shall assist in the quarterly reconciliation of special fees assessed. The insurer shall include an attestation with the quarterly report that the total number of lives insured provided is accurate.

## **Section 6 — Special Fee Assessment**

A. The amount of special fees assessed shall be established in compliance with the requirements of § 10-22-109(2)(a), C.R.S. The Exchange shall communicate the amount of the special fees assessed to the Division, and that amount will be made public through the issuance of a bulletin.

B. The amount of special fees due from each insurer each month is based upon the total number of lives insured in a month multiplied by the special fee assessed as determined by the Exchange.

C. Special fees assessed shall not be considered as premium for any purpose, including, but not limited to, the calculation of gross premium tax or commission amounts.

## **Section 7 — Notice and Collection of Assessed Fees**

- A. The Exchange shall provide a notice to each insurer and to the Division of the special fee to be assessed for the coming calendar year no later than August 1 of each year.
- B. Insurers shall provide the Exchange with the monthly number of lives insured on a quarterly basis in accordance with the requirements of Section 5.D. of this regulation.
- C. Each insurer shall pay the special fees due to the Exchange on a quarterly basis. Payment for the previous quarter shall be made such that it shall be received by the Exchange no later than thirty (30) days after the end of quarter.
- D. In the event that any insurer fails to pay its special fee assessment, the Exchange shall send one (1) notice of nonpayment thirty (30) days after the date payment was to have been received by the Exchange. If the Exchange has not received payment of all amounts due from an insurer within thirty (30) days after the date of the notice of nonpayment, the Exchange shall report the non-payment to the Commissioner of Insurance.
- E. The Commissioner may suspend or revoke an insurer's certificate of authority to transact business in the State of Colorado due to non-payment of the special fees assessed. Prior to suspension or revocation of an insurer's certificate of authority, the Commissioner shall schedule a hearing in compliance with Article 4 of Title 24 of Colorado Revised Statutes. The Commissioner shall provide notice to the insurer of the date of the hearing no less than thirty (30) days prior to the date of the hearing. The notice of hearing shall also contain the amount of special fees owed to the Exchange, as well as instructions on how the insurer can pay all past due special fees assessed.
- F. Any payments in arrears accrued after the first instance of non-payment is reported to the Division shall be included in the proceedings initiated to suspend or revoke an insurer's certificate of authority to transact business in the State of Colorado due to non-payment of the special fees assessed.
- G. Any insurer withdrawing from the Colorado market shall be liable for the assessment owed through the month of the date of withdrawal. The date of withdrawal shall be the date on which the last contract or policy of the insurer in Colorado is discontinued by the insurer in accordance with Colorado insurance laws, or is voluntarily terminated by the policyholder/ subscriber, whichever is sooner. The insurer shall not be liable for any assessment thereafter.
- H. Any insurer discontinuing all policies in a particular Colorado market segment (e.g. small group coverage) shall be liable for the assessment owed through the month when the last remaining policy(ies) has been discontinued in accordance with Colorado insurance laws, or is voluntarily terminated by the policyholder/subscriber, whichever is sooner. The insurer shall not be liable for any assessment owing thereafter.
- I. The special fee assessment amount must be clearly identified in any billing statement provided to consumers.

## **Section 8 — Severability**

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

## **Section 9 — Enforcement**

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition



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

#### **Section 10 — Effective Date**

~~This regulation shall become effective January 1, 2015.~~  
This regulation shall become effective January 1, 2019

#### **Section 11 — History**

~~New regulation effective January 1, 2015.~~  
This regulation shall become effective January 1, 2019

**Appendix A: Monthly Total Number of Lives Insured Reporting Form (to be submitted quarterly)**

[Insurer Name]

[Insurer Logo]

[Date Submitted]

**Exchange Special Fees Assessed –Total Lives Insured Report for [Year]**

[Form to include past months]

<b>Month:</b>	<b>Total Lives Insured:</b>	<b>Date Report Run:</b>
January [Year]:		
February [Year]:		
March [Year]:		
April [Year]:		
May [Year]:		
June [Year]:		
July [Year]:		
August [Year]:		
September [Year]:		
October [Year]:		
November [Year]:		
December [Year]:		
<b>Year to Date:</b>		
<b>Total:</b>		

**Attestation:**

I, [Name], hereby certify and attest that the number of total lives insured contained above is accurate and true, and shall be used in reconciling the amount of special fees owed to the Exchange for Calendar Year [Year].

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

# Notice of Proposed Rulemaking

**Tracking number**

2018-00615

**Department**

900 - Department of Law

**Agency**

901 - Peace Officer Standards and Training Board

**CCR number**

4 CCR 901-1

**Rule title**

PEACE OFFICER TRAINING PROGRAMS AND PEACE OFFICER CERTIFICATION

**Rulemaking Hearing****Date**

12/07/2018

**Time**

01:30 PM

**Location**

1300 Broadway Conf Room 1C Denver CO

**Subjects and issues involved**

The purpose of the amended rules is to provide clarification to persons subject to POST peace officer certification requirements and provide updated information regarding items utilized in these rules.

**Statutory authority**

§24-31-303 (1)(g), (l) and (m)

**Contact information****Name**

Lori Jencks

**Title**

Admin Asst

**Telephone**

720-508-6721

**Email**

lori.jencks@coag.gov

**COLORADO DEPARTMENT OF LAW  
PEACE OFFICER STANDARDS AND TRAINING BOARD**

**2019**

**RULES CONCERNING VARIANCES, APPEAL PROCESS, REVOCATION  
HEARINGS, BASIC, PROVISIONAL AND RESERVE CERTIFICATIONS,  
RENEWAL OF CERTIFICATION, FINGERPRINT-BASED CRIMINAL  
HISTORY RECORD CHECK, CERTIFICATION AND SKILLS  
EXAMINATIONS, CERTIFICATION RECORDS, CERTIFICATION  
SUSPENSION AND REVOCATION, BASIC AND RESERVE TRAINING  
ACADEMIES AND IN-SERVICE TRAINING PROGRAM.**

**STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE**

Pursuant to sections §24-31-303 (1)(g), (l) and (m), C.R.S., the Colorado Peace Officer Standards and Training Board (POST) has the authority and duty to promulgate rules and regulations deemed necessary by such board for the certification of applicants to serve as peace officers or reserve officers in the state, to promulgate rules deemed necessary by such board concerning annual in-service training requirements, and to promulgate rules as the board may deem necessary or proper to carry out the provisions and purposes of article 4 of Title 24.

Amendments are proposed to Rule 1 – Definitions:

- Specify approved academies in definitions for “Assistant skills instructor” and “Full skills instructor.”
- Delete definition for “Conviction.”
- Delete definition for “Dimlight.”
- Add definition for “Disqualifying Incident” to include convictions; entry into deferred judgment and sentencing agreement, deferred prosecution agreement, or pretrial diversion agreement, whether pending or successfully completed; making false or misleading statements or omissions in the application for certification; and otherwise failing to meet the certification requirements established by the Board.
- Add definition for “Incident.”
- Clarify statute reference in definition for “Peace officer.”
- Clarify “Test out” requirements.

Amendments are proposed to Rule 8 – Process for Seeking Exemption from Statutory Certification Restrictions, to eliminate reference to POST fingerprint card, and to include “disqualifying incident” in place of “conviction” so as to include all disqualifying incidents which are not convictions.

Amendments are proposed to Rule 9 – Revocation Hearings for Criminal Conduct, to change the rule title to *Revocation Hearings*, to add disqualifying incident to verbiage, and to remove redundant language.

Amendments are proposed to Rule 10 – Basic Peace Officer Certification, to add college records as proof of high school completion, to remove specific military document form references to allow for multiple discharge forms, and to specify requirement for repeating a Basic academy if certification is not obtained within two years of the end of an academy completion.

Amendments are proposed to Rule 11 – Provisional Certification, to add college records as proof of high school completion, specify requirement for military discharge documentation, specify deadline for receiving Provisional certification, clarify test-out SME requirements, specify requirement to complete mandated § 24-31-315 within six months of appointment, and to change language regarding variance requests to align with language in other rules.

Amendments are proposed to Rule 12 – Reserve Certification, to add college records as proof of high school completion, specify requirement for military discharge documentation, and to specify deadline for receiving reserve certification.

Amendments are proposed to Rule 13 – Renewal of Basic Certification, to clarify test-out SME requirements, and to delete reference to remedial training for skills exams.

Amendments are proposed to Rule 14 – Fingerprint-Based Criminal History Record Check, to include reference to CBI approved vendors for fingerprinting.

Amendments are proposed to Rule 19, to remove fee for Vehicle Identification Number Inspector certification.

Amendments are proposed to Rule 24 – Skills Training Safety and Skills Program Requirements for Basic and Reserve Academies, to clarify timing for dimlight live-fire shooting exercises.

Removal of text of Rule 27 - Retired Law Enforcement Officer Authority to Carry Concealed Firearms. This rule was repealed February 7, 2014.

Amendments are proposed to Rule 28 - In-Service Training Program, to specify that firearms qualification does not meet mandated training requirements, to clarify requirement for agency to enter training for all officers employed at any time throughout the calendar year, to clarify prorated training requirements, to add a waiver requirement for officers on administrative leave, and to specify conditions

under which POST may declare an agency noncompliance after release of final report.

#### Statutory Basis

The statutory basis for adoption of the proposed rules are §24-31-303(1)(g) C.R.S. §24-31-305(1.7)(c) C.R.S. and §24-31-303(l) C.R.S.

#### Purpose

The purpose of the amended rules is to provide clarification to persons subject to POST peace officer certification requirements and provide updated information regarding items utilized in these rules.

#### Contemplated Schedule for Adoption

Rules will be adopted on December 7, 2018, with an effective date of January 30, 2019.

#### Listing of Persons and Parties Affected

Peace officers, including those applying for certification and those currently employed as certified peace officers, and law enforcement academy staff will be affected by this anticipated rulemaking.

It has been declared by the General Assembly that certification and training standards of peace officers is a matter of statewide concern. The absence of implementing rules to carry out the purpose of the statutes would be contrary to the public health, peace, safety and welfare of the state. For these reasons, it is imperatively necessary that these proposed amendments be adopted.

**Rule 1 – Definitions**  
*Effective April ~~2018~~ **JANUARY** 30, 2019*

As used in these rules:

- (a) "Academy director" means that person responsible for the administration and operation of a POST-approved academy.
- (b) "Applicant" means any person formally seeking approval by the Board.
- (c) "Appointed" means sworn in and serving as a peace officer or reserve peace officer.
- (d) "Approved" means formally accepted or authorized by the Board.
- (e) "ACT" means Arrest Control Tactics, one of the skills training programs required for the basic and reserve training academies.
- (f) "Assistant skills instructor" means an individual who has successfully completed a relevant approved skills instructor training program and who may instruct the corresponding skills training program in arrest control, law enforcement driving, or firearms under the direction and in the presence of a full skills instructor, and assist in evaluating and coaching trainees at a ~~a~~ **N APPROVED** basic or reserve training academy.
- (g) "Authorized emergency vehicle" means such vehicles identified in 42-1-102 C.R.S.
- (h) "Board" means the Colorado Peace Officer Standards and Training Board.
- (i) "Bodily injury" means physical pain, illness, or any impairment of physical or mental condition. § 18-1-901(3)(c), C.R.S.
- (j) "Certification examination" means the written test required under § 24-31-305(1)(a)(III), C.R.S.
- (k) "Certified peace officer" means any person who has successfully attained POST Certification as described in § 24-31-305 and 24-31-308, C.R.S.
- ~~(l) "Conviction" means a finding of guilt following either a verdict of guilty by the court or jury, or a plea of guilty, or a plea of nolo contendere. Any Colorado juvenile adjudication is not a conviction.~~
- ~~(m)~~ **(l)** "Course" means a formal unit of instruction relating to a particular subject.
- ~~(n)~~ **(m)** "C.R.S." means Colorado Revised Statutes, codified laws of the State of Colorado.

(n) ~~"Dimlight" means from one half hour after local sunset to one half hour before local sunrise. For indoor ranges, artificial light must be reduced to the lowest level which still allows for target identification and threat assessment without additional illumination from a flashlight.~~

(pn) "Director" means the director of the POST Board staff.

(o) ***"DISQUALIFYING INCIDENT" MEANS:***

- a. ***A FINDING OF GUILT FOLLOWING EITHER A VERDICT OF GUILTY BY THE COURT OR JURY, OR A PLEA OF GUILTY, OR A PLEA OF NOLO CONTENDERE.*** Any Colorado juvenile adjudication is not a conviction.
- b. ***ENTERING INTO A DEFERRED JUDGMENT AND SENTENCING AGREEMENT, A DEFERRED PROSECUTION AGREEMENT, OR A PRETRIAL DIVERSION AGREEMENT OF ANY DISQUALIFYING OFFENSE, WHETHER PENDING OR SUCCESSFULLY COMPLETED.***
- c. ***MAKING MATERIAL FALSE OR MISLEADING STATEMENTS OF OMISSIONS IN THE APPLICATION FOR CERTIFICATION.***
- d. ***OTHERWISE FAILING TO MEET THE CERTIFICATION REQUIREMENTS ESTABLISHED BY THE BOARD.***

(pe) "Enroll" means that a person has applied to and been accepted for admission into an academy and is physically present at the academy to receive instruction.

(qf) "Enrollment date" means the first day of instruction at an approved basic or reserve training academy, and shall be synonymous with the first day of instruction as reflected on the approved academy schedule.

(rs) "Fingerprint-based criminal history record check" means submittal of a POST fingerprint card to the Colorado Bureau of Investigation (CBI) for criminal history check in CCIC and NCIC, as required in § 24-31-304(3), C.R.S.

(st) "Full skills instructor" means an individual who has successfully completed the minimum qualifications required by these Rules and who may develop, implement and evaluate a skills training program at a ***N APPROVED*** basic or reserve training academy.

(tt) ***"INCIDENT" MEANS A SINGLE, DISTINCT EVENT AS DETERMINED BY THE POST DIRECTOR OR DESIGNEE.***



- (u†) "Lateral training academy" means an agency-specific approved academy that instructs academic courses determined by the agency and all hours of the POST skills training programs in arrest control, law enforcement driving and firearms.
- (v) "Lead skills instructor" means a full skills instructor at a basic or reserve training academy who may be designated by the academy director to oversee or coordinate the administration of a specific skills program for a particular academy class.
- (w) "Lesson plan" means a document that specifically describes the material presented during a course of instruction.
- (x) "Moving training" means training where the academy students are involved in movement with a loaded weapon. It is recognized that during square range drills, academy students may move 1-2 steps laterally or forward/backward. The 1:1 ratio is not required for this drill. For all other drills/exercises involving movement a 1:1 ratio is required.
- (y) "Operable firearm" means a firearm that is capable of discharging a bullet if loaded. This does not include firearms designed or modified to discharge marking cartridges or airsoft projectiles during academy reality-based training.
- (z) "Peace officer" means any person recognized in § 16-2.5-101, **PART 1**, C.R.S.
- (aa) "POST certified" means any person possessing a valid, numbered certificate issued by the Board authorizing such person to serve as a peace officer or reserve peace officer.
- (bb) "POST fingerprint card" means a fingerprint card provided by POST.
- (cc) "POST Identification Number" (PID) means a number assigned and unique to each active peace officer's certification file. All inquiries and correspondence to POST should contain this number.
- (dd) "Practical Exercise" means role playing, table top exercises, or other scenario-based training.
- (ee) "Program director" means that person responsible for the administration and operation of a POST-approved training program.
- (ff) "Provisional certification" means a signed instrument issued by the POST Board that grants interim certification for qualified out-of-state peace officers seeking Colorado certification that enables the provisional applicant to obtain

appointment as a peace officer in Colorado while fulfilling the requirements for basic certification.

- (gg) "Recognized disciplines for arrest control training" mean those defensive tactics systems that have been reviewed and approved by the Board in consultation with the Arrest Control Subject Matter Expert Committee. Such systems may include, but are not limited to, Federal Bureau of Investigation (FBI) system, Koga system and Pressure Point Control Tactics (PPCT) system.
- (hh) "Refresher academy" means an approved training program that consists of a minimum of 96 hours of instruction and includes academics or a POST Board approved web-based distance learning program, arrest control, law enforcement driving and firearms.
- (ii) "Relevant approved skills instructor training program" means a basic, not advanced, instructor training program that contains a minimum of forty (40) hours of instruction and with instructional content that meets or exceeds the content of the respective instructor training programs for arrest control, law enforcement driving, or firearms, and that has been formally accepted or authorized by the Board.
- (jj) "Renewal applicant" means an applicant whose Colorado peace officer certificate has expired per § 24-31-305(1.7)(b), C.R.S., and who has applied to renew his/her Colorado peace officer certificate in accordance with § 24-31-305(1.7)(c), C.R.S. and POST Rule 13.
- (kk) "Reserve peace officer" means any person described in § 16-2.5-110, C.R.S., and includes any person authorized to carry a firearm, conduct arrests, and enforce the laws of the state of Colorado pursuant to § 16-2.5-110, C.R.S., but does not include any person appointed by a sheriff pursuant to § 30-10-506.
- (ll) "Serious bodily injury" means bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree. § 18-1-901(3)(p), C.R.S.
- (mm) "Skills examination" means the approved practical test of an applicant's proficiency in arrest control, law enforcement driving, or firearms.
- ~~(nn) "Skills only training academy" means an approved academy instructing~~  
~~— arrest control, law enforcement driving, and firearms, which meets the skills~~  
~~— requirements under the POST basic curriculum and these Rules.~~

(~~nn~~~~ee~~) "Skills training" means the required approved arrest control, law enforcement driving, and firearms courses.

(~~oo~~~~pp~~) "State" means any State in the United States, the District of Columbia, and any territory or possession of the United States.

(~~pp~~~~qq~~) "Subject Matter Expert" (SME) means an individual formally recognized by the Board for his or her extensive knowledge, expertise and/or experience in one of the skills areas or in academics.

(~~qq~~~~rr~~) "Successful completion" means a POST-approved academy or program score of seventy (70) percent or greater, or a grade of "C" or better, or a rating of pass, if offered as pass/fail. For the certification examination passing score, see Rule 15.

(~~rr~~~~ss~~) "Test out" means a **POST-SCHEDULED** skills examination where proficiency is assessed **BY A POST SUBJECT MATTER EXPERT (SME)** in all three perishable skills (Arrest Control, **LAW ENFORCEMENT** Driving, and Firearms) and the written POST certification exam is administered.

(~~ss~~~~tt~~) "Training academy" means a POST-approved school, agency or other entity that provides POST-approved training programs.

(~~tt~~~~uu~~) "Training program" means a POST-approved course of instruction required by statute, or Rule, or for peace officer certification and other peace officer training programs as otherwise recognized and approved by the Board.

## Rule 8 –Process for Seeking Exemption from Statutory Certification Restrictions

Effective ~~April~~ **JANUARY** 30, 2018**9**

- (a) The Board has promulgated these rules to ensure orderly and fair treatment of all POST approved training academy, renewal and provisional peace officer applicants. § 24-31-305, C.R.S., requires the POST Board to deny or revoke certification of any person **WITH A DISQUALIFYING INCIDENT**, ~~a felony or particular misdemeanors or who has entered into a deferred judgment and sentencing agreement, a deferred prosecution agreement, or a pretrial diversion agreement for any offense, regardless whether the agreement is pending or was successfully completed.~~
- (b) If an applicant anticipates prior to the denial of certification that **THEY** ~~he or she~~ will be denied certification on the ground that the applicant has **A DISQUALIFYING INCIDENT** ~~been convicted of any misdemeanor described in subsection 1.5 of § 24-31-305, C.R.S., or has entered into a deferred judgement and sentencing agreement, deferred prosecution agreement, or pretrial diversion agreement for a felony or misdemeanor described in that subsection,~~ the applicant must provide a fingerprint-based criminal history record check, by submitting a POST fingerprint ~~S~~**e**arch to the Colorado Bureau of Investigation (CBI) and the Federal Bureau of Investigation (FBI), and requesting an exemption from denial of certification. When POST receives the criminal history and exemption request, it will process the exemption request using the process described in (c), below.
- (c) To appeal denial of Colorado certification, an applicant or the chief law enforcement officer, if any, of the potential employing agency must submit a written petition to the POST Director, notifying the Board of such **DISQUALIFYING INCIDENT** ~~conviction, deferred judgment and sentencing agreement, deferred prosecution agreement, or pretrial diversion agreement,~~ and requesting the Director to grant the applicant an exemption from denial of certification. The petition must fully explain all relevant facts. Any person appealing a denial of certification due to a **DISQUALIFYING INCIDENT** ~~misdemeanor conviction~~ or seeking an exemption allowing certification in spite of a **DISQUALIFYING INCIDENT** has the burden of establishing that:
  - (I) The exemption is consistent with the basic purposes and policies of § 24-31-305, et seq., C.R.S., including § 24-31-305(1.5)(b), if applicable; and
  - (II) Mitigating circumstances exist that warrant exemption; and
  - (III) Certification would be in the public interest; and

- (IV) A true and accurate copy of the court record with disposition, **LAW ENFORCEMENT** and police offense/case report **FROM THE DISQUALIFYING INCIDENT, AND/OR ANY OTHER RELEVANT DOCUMENTATION OF A DISQUALIFYING INCIDENT**, upon which the conviction resulted is attached to the petition. If the charging agency no longer has a copy of the report, a letter from the agency verifying that fact should be attached.
- (d) The Director, at their discretion, may determine the merits of the request based upon the applicant's written submissions, or may request additional information.
- (e) Any exemption granted under this rule shall be subject to such limitations or conditions as the Director or Board deems necessary in order to conform to the basic purposes and policies of applicable law.
- (f) ***The Director's decision may be appealed by following the process outlined in Rule 5 – Hearings.*** ~~After a decision has been made by the POST Director, the applicant has thirty (30) days to appeal the decision to the POST Board. If any determination made by the Director pursuant to this rule is not appealed by the applicant within thirty (30) days pursuant to Rule 5(e), such determination shall become final. An appeal of the Director's decision must be made in writing and submitted to the POST Director. Upon receipt of the appeal, the POST Director will notify the POST Board members and place the appeal on the agenda for the next POST Board meeting. If a majority of the POST Board members present at the meeting agree to hear the appeal, a five member subcommittee of Board members will be appointed by the Board Chair to hear the appeal. The appeal hearing must commence within thirty (30) days from the date the Board agreed to hear the appeal. The sub-committee may summarily affirm the Director's decision, request additional information, conduct a hearing, or take other action it deems necessary to reach a decision. The sub-committee's action shall be deemed final agency action. The applicant will be notified of the Board's action.~~
- (g) In accordance with § 24-31-303(5)(a) and § 24-31-305(1.6)(a)(b), C.R.S., no person may, through an exemption or otherwise, serve as a certified peace officer, as defined in § 16-2.5-102 or § 16-2.5-110, C.R.S., without having first passed the required certification requirements and become certified.

## Rule 9 – Revocation Hearings for Criminal Conduct

*Effective April ~~2018~~ **JANUARY 30, 2019***

- (a) A Colorado peace officer certification issued pursuant to § 24-31-305, C.R.S., shall be suspended or revoked by the POST Board if the certificate holder has:
  - (I) been convicted of a felony, or
  - (II) been convicted on or after July 1, 2001, of any misdemeanor described in subsection (1.5) of § 24-31-305, C.R.S., or,
  - (III) entered into a deferred judgment and sentencing agreement, deferred prosecution agreement, or pretrial diversion agreement for one of the offenses described above, regardless whether the agreement is pending or was successfully completed;
  - (IV) made material false or misleading statements or omissions in the application for certification, or
  - (V) otherwise failed to meet the certification requirements established by the Board.
- (b) The certificate holder or the chief law enforcement officer of the agency employing such certificate holder may, within thirty (30) days after the effective date of the conviction **DISQUALIFYING INCIDENT** of such ~~misdemeanor or entrance into a deferred judgement and sentencing agreement, deferred prosecution agreement, or pretrial diversion agreement,~~ petition the Board for an exemption by following the requirements of Rule 8.
- (c) The procedures set forth in Rule 5 shall be utilized with the Director making an initial determination.
- (d) The Director, in his discretion, may determine the merits of the request based upon the applicant's written submissions, or may request additional information.
- (e) A decision by the Director is final unless appealed to the Board within thirty (30) days of the date of such decisions. If a decision is appealed to the Board, the Board will decide whether to hear the appeal. An appeal of the Director's decision must be made in writing and submitted to the POST Director. Upon receipt of the appeal, the POST Director will notify the POST Board members and request a decision be made. If a majority of the POST Board members agree to hear the appeal, a five-member panel of

Board members shall proceed to hear the Board appeal. The appeal hearing must commence within thirty (30) days from the date the Board agreed to hear the appeal. The certificate holder will be notified of the Board's action. This decision, whether summarily affirmed or decided by the board subcommittee, shall be deemed final board action. The applicant will be notified of the Board's action.

## Rule 10 – Basic Peace Officer Certification

Effective ~~July 1, 2017~~ **JANUARY 30, 2019**

- (a) The POST Board is authorized to issue POST Basic Peace Officer Certification to any applicant who meets the following requirements:
- (I) Possesses and submits a copy of their high school diploma, high school equivalency certificate, or other evidence of successful completion of high school, **INCLUDING OFFICIAL COLLEGE TRANSCRIPTS OR DEGREE**; and
  - (II) Possesses and submits a copy of their current first aid and cardiopulmonary resuscitation certification, or equivalents; and
  - (III) Truthfully completes and submits the POST Form 1 - *Application for Basic Peace Officer Certification*; and
    - (A) If previously certified as an officer in another state but is ineligible to apply as a provisional applicant, the applicant must be in good standing with the other certifying state and must complete and submit to POST a POST Form 3 – Application for Provisional Certification and a Release of Information Form within thirty (30) days of starting the academy.
  - (IV) Successfully completes the fingerprint-based criminal history record check required under Rule 14 **AND MEETS ALL OF THE FOLLOWING REQUIREMENTS**: ~~;~~ and
    - (V) (A) If applicable, submits a copy of their **OFFICIAL MILITARY DISCHARGE DOCUMENTS** DD214 ~~or NGB-22~~ showing they ~~have not been released or discharged from the Armed Forces of the United States under~~ **SHOWING CHARACTER OF SERVICE OTHER THAN** dishonorable conditions, per § 24-31-301(5), C.R.S.; ~~and~~
    - (VI) (B) Successfully completes an approved basic training academy, including skills training, and passes the written certification examination within two years of the graduation date; and

~~[Skills testing is valid for two years from the date of completion, after this time has elapsed, if full certification was not issued, the applicant must retest on all skills (driving, arrest control and firearms)].~~



~~(VII)~~ (C) Submits a copy of their academy certificate of completion; ~~and~~

~~(VIII)~~ (D) Possesses and submits a copy of their current Colorado Driver's License or State-Issued Identification card.

(V) **TESTING IS VALID FOR TWO YEARS FROM THE DATE OF COMPLETION. AFTER THIS TIME HAS ELAPSED, IF FULL CERTIFICATION WAS NOT ISSUED, THE APPLICANT MUST SUCCESSFULLY COMPLETE AN ADDITIONAL BASIC ACADEMY PROGRAM.**

- (b) POST Basic Peace Officer Certification qualifies the person to seek employment and serve as a fully authorized peace officer with any Colorado law enforcement agency recognized in Article 2.5 of Title 16, C.R.S.
- (c) Upon issuance of a basic certification, if all training requirements under § 24-31-315 C.R.S. have not previously been met, the individual must complete all requirements within six (6) months from date of appointment.
  - (I) Complete 2 hours of training in each of the following areas: anti-bias, community policing, situational de-escalation, and proper holds and restraints.
- (d) If a basic or reserve certificate holder has not served as a peace officer or reserve peace officer for a total of at least six (6) months during any consecutive three-year period, the certification automatically expires at the end of such three-year period, unless the certificate holder is then serving as a peace officer or reserve peace officer.
  - (I) If a basic or reserve certificate holder is deployed for military service, the certification automatically expires at the end of a three-year period from the date of certification or the date of separation from a Colorado law enforcement agency. If expired, the basic certificate holder is eligible to complete the certification renewal process. If employed at time of deployment, the certificate holder, at the agency's discretion, may remain on the employment roster and their certification will not expire.
- (e) A certified peace officer who has obtained basic certification may maintain current status as a certified peace officer while serving in a reserve peace officer position, recognized in § 16-2.5-110, C.R.S.

- (f) A certified reserve peace officer seeking regular basic peace officer certification may apply their successfully completed skills training, obtained through the reserve peace officer certification program at a POST approved reserve academy, towards basic peace officer certification. Acceptance of the skills training is at the option of the director of the basic peace officer training academy to which the applicant is seeking enrollment.

## **Rule 11 – Provisional Certification**

*Effective July 1, 2018 **JANUARY 30, 2019***

- (a) The Board is authorized to issue a provisional certification letter to any applicant who is authorized to serve as a certified peace officer by any other state or federal jurisdiction, excluding the armed forces, which has established minimum law enforcement training standards that are equivalent to the standards established by Colorado as determined by the POST Director. The provisional applicant must be fully certified within the preceding three years and have served as a certified law enforcement officer in a full or part-time status in good standing in such other state or federal jurisdiction for more than one year. The applicant must additionally meet all of the following requirements:
  - (I) Possess and submit a copy of their high school diploma, or high school equivalency certificate, or other evidence of successful completion of high school **INCLUDING OFFICIAL COLLEGE TRANSCRIPTS OR DEGREE**, and;
  - (II) Possess and submit a copy of their current first aid and cardiopulmonary resuscitation certification, or equivalents;
  - (III) Truthfully complete and submit the POST Form 3 – Application for Provisional Certification and a notarized copy of the Release of Information Form;
  - (IV) Successfully complete the fingerprint-based criminal history record check required under Rule 14; and
  - (V) **IF APPLICABLE, SUBMITS A COPY OF THEIR OFFICIAL MILITARY DISCHARGE DOCUMENTS-SHOWING CHARACTER OF SERVICE OTHER THAN DISHONORABLE CONDITIONS**
  - (VI) Pass the certification examination or, if leaving active out-of-state (the state in which the individual is certified) or federal peace officer employment, pass the certification exam within six (6) months from the date of issuance of the provisional certification.
  - (VII) **MUST RECEIVE PROVISIONAL CERTIFICATION WITHIN ONE YEAR OF SUBMITTING APPLICATION.**
- (b) If an applicant becomes ineligible prior to receiving their provisional certification letter due to time-in-service requirements, the applicant must request and be granted a Rule 7 variance in order to move forward in the provisional process.

- (c) A provisional certification letter authorizes the holder to serve as a certified Colorado peace officer for not more than six (6) months. A provisional certification letter may only be issued one time per year, per person.
- (d) The Board shall issue a basic certificate to the holder of a provisional certification letter if such person satisfies any combination of the following skills proficiency requirements, or, if leaving active out-of-state (the state in which the individual is certified) or recognized federal peace officer employment, satisfies any combination of the following skills proficiency requirements within six (6) months from the date of issuance of the provisional certification:
  - (I) Successfully completes skills training at a POST-approved basic peace officer training academy;
  - (II) Successfully completes a POST-approved refresher academy, including the arrest control, law enforcement driving, and firearms skills training;
  - (III) Passes a skills examination **test out** pursuant to Rule 16 in each of ~~the three (3) skills disciplines at a POST test-out site, or passes all portions of the three (3) skills examinations at a regional test-out site, as documented by an approved skills instructor. Approved skills instructors includes:~~ **WITH** SME committee members or POST-approved designees who are not members of the applicant's employing agency;
  - ~~(IV) Passes only some portions of the examinations referred to in (III) and the applicant elects to complete prescribed remedial training with respect to those portions not passed and successfully passes the skills test-out examination following the remedial training; or~~
  - ~~(V) Passes a POST-approved lateral training academy that includes agency-specific academic courses and skills training in arrest control, law enforcement driving and firearms.~~
- (e) Upon issuance of a provisional certification and appointment to an agency the individual must comply with training requirements outlined in § 24-31-315 C.R.S **WITHIN SIX MONTHS OF DATE OF APPOINTMENT**.
  - (I) Complete 2 hours of training in each of the following areas: anti-bias, community policing, situational de-escalation, and proper holds and restraints.

- (f) The POST-approved skills instructor must submit the completed *POST Skills Testing Grade Sheet* to POST.
- (g) Persons desiring additional time to complete the basic certification requirements beyond the initial six (6) months provided by the provisional certification letter must ~~petition~~ **SUBMIT A VARIANCE REQUEST TO** the Director and demonstrate good cause why such additional time should be granted.

## Rule 12 – Reserve Certification

Effective **January 30, 2019** ~~July 1, 2017~~

- (a) The Board is authorized to issue a reserve certificate to any applicant who meets the following requirements:
- (I) Possesses and submits a copy of their high school diploma, or high school equivalency certificate, or other evidence of successful completion of high school, **INCLUDING OFFICIAL COLLEGE TRANSCRIPTS OR DEGREE**; and
  - (II) Possesses and submits a copy of their current first aid and cardiopulmonary resuscitation certification, or equivalents; and
  - (III) Truthfully completes and submits the POST Form 2 – Application for Reserve Certification; and
  - (IV) Successfully completes the fingerprint-based criminal history record check required under Rule 14 **AND MEETS ALL OF THE FOLLOWING REQUIREMENTS**; ~~and~~
  - ~~(V)~~ **(A)** If applicable, submits a copy of their **OFFICIAL MILITARY DISCHARGE DOCUMENTS** DD214 showing **CHARACTER OF SERVICE OTHER THAN** ~~they have not been released or discharged from the Armed Forces of the United States under dishonorable conditions, per § 24-31-301(5), C.R.S.; and~~
  - ~~(VI)~~ **(B)** Successfully completes an approved reserve academy including skills training within two (2) years of the graduation date; ~~and~~
  - ~~(VII)~~ **(C)** Submits a copy of their **ACADEMY** certificate of completion; ~~and~~
  - ~~(VIII)~~ **(D)** Possesses and submits a copy of their current Colorado driver's license or state-issued identification card.
- (V) TESTING IS VALID FOR TWO YEARS FROM THE DATE OF COMPLETION. AFTER THIS TIME HAS ELAPSED, IF RESERVE CERTIFICATION WAS NOT ISSUED, THE APPLICANT MUST SUCCESSFULLY COMPLETE AN ADDITIONAL RESERVE ACADEMY PROGRAM.]**

- (b) Upon issuance of a reserve certification and appointment to an agency the individual must comply with training requirements outlined in § 24-31-315 C.R.S. within six (6) months.
  - (I) Complete 2 hours of training in each of the following areas: anti-bias, community policing, situational de-escalation, and proper holds and restraints.
- (c) Any law enforcement agency assigning duties to a reserve peace officer beyond those included in the approved reserve training shall assume the responsibility for ensuring that such reserve peace officer is adequately trained for such duties.
- (d) A reserve certification shall expire automatically if the certificate holder is not serving and has not served as a reserve peace officer for at least six (6) months within the previous three (3) years.
- (e) Reserve certifications may not be renewed.
- (f) A certified peace officer may maintain current status as a certified peace officer while serving in a reserve peace officer position, recognized in § 16-2.5-110, C.R.S.

## Rule 13 – Renewal of Basic Certification

Effective **January 30, 2018** ~~July 1, 2017~~

The Board is authorized to renew a basic certificate for any applicant who:

- (a) Has not served as a peace officer or reserve peace officer within the previous three (3) years; and
- (b) Possesses and submits a copy of their current first aid and cardiopulmonary resuscitation certification, or equivalents; and
- (c) Truthfully completes and submits the POST Form 4 – Application for Renewal of Basic Certification; and
  - (I) If an applicant has worked in another state as a certified peace officer after being certified in Colorado, they must truthfully complete and submit the POST Form 3 – Application for Provisional Certification, and a notarized copy of the Release of Information Form; and
- (d) Successfully completes the fingerprint-based criminal history record check required under Rule 14; and
- (e) Passes the certification examination pursuant to Rule 15; and
- (f) Satisfies any combination of the following skills proficiency requirements:
  - (I) Successfully completes skills training at a POST approved basic peace officer training academy;
  - (II) Successfully completes a POST approved refresher academy, including the arrest control, law enforcement driving, and firearms skills training;
  - (III) Passes a **TEST OUT** ~~skills examination pursuant to Rule 16 in each of the three (3) skills disciplines at a POST test-out site, or passes all portions of the three (3) skills examinations at a regional test-out site, as documented by an approved skills instructor. Approved skills instructors include:~~ **WITH** SME committee members or POST-approved designees who are not a member **S** of the applicant's employing agency.;  
~~or~~
  - (IV) ~~Passes only some portions of the examinations referred to in (III) and the applicant elects to complete prescribed remedial training with respect to those portions not passed and successfully passes the skills test-out examination following the remedial training.~~



- (g) The POST-approved skills instructor must submit the completed *POST Skills Testing Grade Sheet* to POST.
- (h) Individuals renewing their certification must complete physical and psychological examinations pursuant to § 24-31-303(5), C.R.S. prior to becoming employed.
- (i) Upon renewal of a Colorado basic peace officer certification and appointment to an agency the individual must comply with training requirements outlined in C.R.S. §24-31-315 within six (6) months.
  - (I) Complete 2 hours of training in each of the following areas: anti-bias, community policing, situational de-escalation, and proper holds and restraints.

## Rule 14 – Fingerprint-Based Criminal History Record Check

*Effective July 1, 2017*

- (a) Definitions.
  - (I) The fingerprint-based criminal history record check is a computerized search of a person's fingerprints that have been taken on a POST Applicant Fingerprint Card, **OR BY A COLORADO BUREAU OF INVESTIGATIONS (CBI) AUTHORIZED VENDOR**, and processed by ~~the Colorado Bureau of Investigation (CBI)~~ and the Federal Bureau of Investigation (FBI) for the purpose of determining a person's eligibility for certification as a peace officer in the State of Colorado.
  - (II) The enrollment date of a training academy is the first day of instruction at an approved basic or reserve training academy. The enrollment date shall be synonymous with the first day of instruction as reflected on the approved academy schedule.
  - (III) As used in this Rule, to enroll in an academy means that a person has applied and been accepted for admission into an academy and is physically present at the academy to receive instruction.
- (b) Eligibility for certification. No person shall be eligible for certification as a Colorado peace officer if he or she has been convicted of a felony or any misdemeanor as referenced in § 24-31-305(1.5), C.R.S., or any misdemeanor in violation of federal law or the law of any state or any local municipal ordinance that is the equivalent of any of the offenses specified in § 24-31-305(1.5), C.R.S.
- (c) Enrollment. Pursuant to § 24-31-304, C.R.S. and POST Rules, all persons seeking to either enroll in a training academy or participate in the testing process as a provisional or renewal applicant shall submit their fingerprints to CBI prior to enrolling in the training academy or prior to participating in the testing process as a provisional or renewal applicant.
- (d) POST Applicant Fingerprint Card.
  - (I) The POST Applicant Fingerprint Card is the only authorized fingerprint card that shall be submitted for the fingerprint-based criminal history record check.
  - (II) The Board recommends that a person's fingerprints be taken on the POST Applicant Fingerprint Card at a law enforcement agency, **OR**

***SUBMITTED ELECTRONICALLY BY A CBI-AUTHORIZED VENDOR.*** Any fee that may be charged by the agency ***OR VENDOR*** for this service is the responsibility of the applicant.

- (III) Payment of a fee to cover the cost of processing the POST Applicant Fingerprint Card must be submitted to CBI with each completed POST Applicant Fingerprint Card, ***OR WITH SUBMISSION BY A CBI-AUTHORIZED VENDOR.*** Remittance of this fee to CBI is the responsibility of the applicant.
  - (IV) For provisional and renewal applicants, the POST Applicant Fingerprint Card will be provided by POST. The applicant is responsible for having ~~his or her~~ ***THEIR*** fingerprints taken and for ensuring that the completed POST Applicant Fingerprint Card and fee are submitted to CBI, ***OR THAT FINGERPRINTS ARE SUBMITTED TO CBI BY A CBI-AUTHORIZED VENDOR,*** prior to the applicant's participation in the testing process as a provisional or renewal applicant.
  - (V) For persons seeking to enroll in a basic or reserve training academy, the POST Applicant Fingerprint Card will be provided by the academy. The person's fingerprints shall be taken in accordance with the academy's policies and procedures. The academy is responsible for ensuring that the completed POST Applicant Fingerprint Card and fee are submitted to CBI, ***OR THAT FINGERPRINTS ARE SUBMITTED TO CBI BY A CBI-AUTHORIZED VENDOR,*** prior to the person's enrollment in the academy.
  - (VI) Fingerprint returns are valid for one year. Individuals re-enrolling into an academy must be reprinted if the prior fingerprints are older than one year.
- (e) Results from completed criminal history record checks.
- (I) The Board shall be the authorized agency to receive the results from all POST Applicant Fingerprint Cards/***SUBMISSIONS*** that have been processed for the state and national fingerprint-based criminal history record checks.
  - (II) All results from the completed criminal history record checks will be provided to the POST Director. Notice of subsequent arrests and convictions resulting in denial of certification will be provided to the Board.

(f) Basic and reserve training academies.

- (I) A training academy shall not enroll any person who has been convicted of an offense that would result in the denial of certification pursuant to § 24-31-305(1.5), C.R.S. The only exception shall be if the Board has granted the person an exemption from denial of enrollment pursuant to § 24-31-304(4)(a), C.R.S. and POST Rule 7, *Variances*.
- (II) No person shall be enrolled in a training academy unless the person has been fingerprinted on a POST Applicant Fingerprint Card and an academy has submitted the person's completed POST Applicant Fingerprint Card and fee to CBI, **OR FINGERPRINTS HAVE BEEN SUBMITTED BY A CBI-AUTHORIZED VENDOR**, prior to enrolling the person in the academy.
- (III) A POST Form 11-E, *Enrollment Advisory Form*, shall be completed on the first day of the academy by both the person enrolled in the academy and the academy director or designee. The completed *Enrollment Advisory Form* shall be maintained at the academy.
- (IV) The academy director shall ensure that an accurate and complete enrollment roster for each academy class is received at POST electronically by the tenth (10) day after the academy commences. The enrollment roster will be completed on the template provided by POST to the academy director.
  - (A) The enrollment roster must be fully completed with all personal information, education, military service, etc. and returned to POST staff. After entry, the roster will be returned to the academy director with assigned PID numbers.
- (V) If the results of a criminal history record check reveal that a person currently enrolled in an academy is prohibited from enrolling pursuant to § 24-31-304(2), C.R.S., the Board or its designated representative(s) shall notify the academy. The academy shall take appropriate measures to immediately dismiss the person from the academy.

(g) Exemption from denial of enrollment.

- (I) If a person anticipates that he or she will be prohibited from either enrolling in a training academy or participating in the testing process as a provisional or renewal applicant because he or she has been convicted of any misdemeanor described in § 24-31-305(1.5), C.R.S., the person may submit a request for exemption from denial of enrollment under

POST Rule 8, *Appeal Process for Peace Officer Applicants - Certification Denial as a Result of a Misdemeanor Conviction.*

- (II) Only if the person has, in fact, submitted a request for exemption from denial of enrollment under POST Rule 8, *Appeal Process for Peace Officer Applicants - Certification Denial as a Result of a Misdemeanor Conviction*, and the request has been granted by the Board, will the person be permitted to either enroll in a training academy or participate in the testing process as a provisional or renewal applicant.
- (III) No person convicted of a felony may request an exemption from denial of enrollment.

## **Rule 19 – Vehicle Identification Number Inspectors**

*Effective January 30, 2019 ~~1, 2011~~*

Any person seeking certification as a Vehicle Identification Number Inspector must meet each of the following requirements:

- (a) Currently serving as a peace officer recognized in Title 16, Article 2.5 of the Colorado Revised Statutes or as “Inspector” defined in Title 42 Article 5 of the Colorado Revised Statutes; and
- (b) Successfully completes and submits his/her certificate of completion from an approved Vehicle Identification Number course; and
- (c) ~~Pay to the POST Board a certification fee of twenty five dollars (\$25.00) in the form of a certified check, money order or agency check; and~~
- ~~(d)~~ Completes and submits the POST Form 9 – *Application for VIN Inspector Certification*.

**Rule 24 – Skills Training Safety and Skills Program  
Requirements for Basic and Reserve Academies**

*Effective ~~July 1, 2018~~ **JANUARY 30, 2019***

- (a) For ALL skills training programs: arrest control, law enforcement driving and firearms
  - (I) A daily schedule is required.
    - (A) The daily schedule shall be in addition to the lesson plan requirement of Rule 21, *Basic and Reserve Training Academies*.
    - (B) The daily schedule shall contain the information described in each of the skills training programs: Arrest Control Training Program, Law Enforcement Driving Program, and Firearms Training Program.
    - (C) The format, number of pages and organization of information on the daily schedule(s) shall be at the discretion of the primary skills instructor and/or academy director.
  - (II) Written daily attendance records are required.
    - (A) Written attendance records for all dates of skills training shall be maintained for all trainees enrolled in the skills training program AND for all skills instructors who teach any portion of the skills training program; and
    - (B) Attendance records shall be accurate and up-to-date and must be available during POST inspections of the skills program in progress.
  - (III) Site safety plans are required.
    - (A) Each site of skills training must have an up-to-date and approved written site safety plan present on site during any academy training at the site; and
    - (B) All academy staff members, instructors and trainees shall be familiar with the content of each site safety plan as it pertains to the nature and scope of their involvement with the academy.
  - (IV) For all hours of all skills training programs, 100% attendance and participation are mandatory.

- (V) There must be at least one full skills instructor present at the site of instruction for each skills training session, excluding lecture-only sessions conducted in a classroom setting.
- (VI) Successful completion is required.
  - (A) For the Arrest Control Training Program and the Law Enforcement Driving Program, the minimum requirement for successful completion is seventy percent (70%); and
    - (1) Each academy may apply a higher standard for successful completion of any portion of the skills training program that is greater than seventy percent (70%); and
    - (2) If such a higher standard is applied, the higher standard must be described in the respective skills lesson plan and in the Trainee Manual.
  - (B) For the Firearms Training Program, the mandatory requirement for successful completion of the Handgun Qualification Course is to fire the course exactly as prescribed in the Firearms Training Program with all rounds being on the silhouette.
- (b) Arrest control training
  - (I) There must be at least one arrest control instructor for every ten (10) trainees (*i.e.*, 1:10 ratio) during any practicum or lab session.
  - (II) No practicum or lab session may exceed eight (8) hours in any one-day.
  - (III) Mats or mat coverings must be serviceable and cleaned on a regular basis and immediately before use with an appropriate cleansing agent and/or disinfectant.
  - (IV) Only those arrest control disciplines that have been reviewed and approved as recognized disciplines for arrest control training are acceptable instruction for the Arrest Control Training Program.
  - (V) Each academy shall ensure that all arrest control instructors maintain current certification for the academy's arrest control discipline in accordance with the standards for recertification, if any, of the recognized discipline for arrest control training.



- (VI) All trainees must successfully complete a skills test out and written examination in accordance with the discipline being taught. If the program does not have a test out, then each trainee at a minimum must successfully complete the arrest control skills test as used in the POST provisional/renewal of certification process.
  - (VII) All academy Arrest Control Training programs must be comprised of at least 60% lab hours. Lab hours are defined as any hands-on skills training.
  - (VIII) Operable firearms, as defined in POST Rule 1, shall not be utilized during any arrest control training.
- (c) Law enforcement driving training
- (I) There must be at least one driving track vehicle and one law enforcement driving instructor for every six (6) trainees (*i.e.*, 1:6 ratio) during any instruction at the track.
  - (II) No track exercise and/or practicum may exceed twelve (12) hours in any 24-hour period.
  - (III) Academy directors shall ensure that no trainee be permitted to participate in a law enforcement driving program unless the trainee possesses a valid driver's license.
  - (IV) There must be at least one (1) fully charged five (5) pound size or larger, dry chemical, Class ABC fire extinguisher on site during any instruction at the track.
  - (V) Prior to receiving any nighttime Law Enforcement Driving Program instruction at the track, each trainee shall receive a minimum of twelve (12) hours of daylight driving instruction at the track.
  - (VI) Night driving shall start no earlier than thirty (30) minutes prior to sunset.
  - (VII) Operable firearms, as defined in POST Rule 1, shall not be utilized during any law enforcement driving training.
- (d) Firearms training
- (I) There must be at least one firearms instructor for every four (4) trainees enrolled in the academy program (*i.e.*, 1:4 ratio) anytime a

trainee is handling an operable firearm, whether loaded or unloaded, at any location, including in the classroom and at the range, except as noted in the following paragraph (III). This 1:4 instructor to trainee ratio shall not include the instructor running the range exercise. For live fire tactical exercises, drills, and dim light shooting that requires movement, the instructor to trainee ratio shall be 1:4 with an emphasis on the four (4) rules of firearms safety.

- (II) No range exercise and/or lab session may exceed eight (8) hours in any one day.
- (III) For all decisional shooting scenarios, there must be an instructor to trainee ratio of 1:1.
- (IV) Only POST approved firearms instructors and not agency trained safety officers may be utilized to satisfy the minimum ratios of firearms instructors to trainees.
- (IV) Prior to receiving any dim light firearms instruction at the range, each trainee shall receive a minimum of forty (40) hours of Firearms Training Program instruction, to include at least eight (8) hours of classroom lecture and thirty-two (32) hours of daylight live range instruction.
- (V) ***DIMLIGHT LIVE-FIRE SHOOTING SHALL START NO EARLIER THAN THIRTY (30) MINUTES PRIOR TO SUNSET. INDOOR RANGES ARE EXEMPT FROM SUNSET REQUIREMENT.***
- (VI) Only high-visibility, fluorescent colored “dummy” ammunition may be used for any weapons handling other than actual live fire shooting.
- (VII) Trainees must be provided written and oral reminders over the course of the training of the four (4) rules of firearms safety:
  - (A) All weapons must be treated as if they are always loaded; and
  - (B) Never let the muzzle of a weapon point at anything you are not willing to destroy; and
  - (C) Keep your finger off the trigger and out of the trigger guard until the sights are on the target and you are prepared to shoot; and

- (D) Always be certain of the target and beyond.
- (VIII) All trainees must be familiar with the four (4) rules of firearms safety prior to handling any operable firearm.
- (IX) Firearms ranges must display some type of visual notification (range flag, signs, lights, or other) whenever the range is being utilized for live fire.
- (X) Each trainee must fire the minimum number of live rounds of handgun ammunition in a single weapons system, revolver or semi-automatic, as stipulated in the current POST firearms training program, before completing the program.

## Rule 27 – Retired Law Enforcement Officer Authority to Carry Concealed Firearms

*Effective July 11, 2011*

*Federal Law Effective October 12, 2010*

***Repealed February 7, 2014***

~~Pursuant to Chapter 44 of Title 18, United States Code, § 926C, the "Law Enforcement Officer Safety Act Improvement Act of 2010", and notwithstanding any other provision of the laws of the State of Colorado or any political subdivision thereof, an individual who is a qualified retired law enforcement officer who is carrying the identification required may carry a concealed firearm.~~

### ~~I. Colorado Concealed Weapons Permit.~~

- ~~(A) Nothing in this rule will prohibit a retired law enforcement officer from seeking and obtaining a concealed weapons permit pursuant to Title 18, Article 12, Section 2, C.R.S.~~

### ~~II. Federal Eligibility Requirements for qualified Retired Law Enforcement Officers.~~

- ~~(A) It will be the responsibility of the retired peace officer to determine if he/she meets the criteria of being a "qualified retired law enforcement officer." As used in this rule, the term "qualified retired law enforcement officer" means an individual who:~~
- ~~(1) Separated in good standing from service with a public agency as a law enforcement officer; and~~
  - ~~(2) Before such separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for any violation of law and had statutory powers of arrest; and~~
  - ~~(3) (a) Before such separation served as a law enforcement officer for an aggregate of 10 years or more; or~~
    - ~~(b) Separated from service with such agency after completing any applicable probationary period of such service, due to a service connected disability as determined by such agency; and~~
  - ~~(4) During the most recent 12-month period has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by;~~

- ~~\_\_\_\_\_ (a) \_\_\_\_\_ The former agency of the individual; or~~
- ~~\_\_\_\_\_ (b) \_\_\_\_\_ A law enforcement agency within the state in which the  
\_\_\_\_\_ individual \_\_\_\_\_ resides; or~~
- ~~\_\_\_\_\_ (c) \_\_\_\_\_ The standards used by a certified firearms instructor that  
\_\_\_\_\_ is \_\_\_\_\_ qualified to conduct a firearms qualification test for  
\_\_\_\_\_ active duty \_\_\_\_\_ officers within the state; and~~
- (5) ~~(a) \_\_\_\_\_ Has not been officially found by a qualified medical  
\_\_\_\_\_ professional employed by the agency to be unqualified for  
\_\_\_\_\_ reasons relating to mental health and as a result of this  
\_\_\_\_\_ finding will not be issued the \_\_\_\_\_ required photographie  
\_\_\_\_\_ identification; or~~
- ~~\_\_\_\_\_ (b) \_\_\_\_\_ Has not entered into an agreement with the agency from  
\_\_\_\_\_ which the \_\_\_\_\_ individual is separating from service in  
\_\_\_\_\_ which that individual \_\_\_\_\_ acknowledges he or she is not  
\_\_\_\_\_ mental health and for those reasons will not receive or  
\_\_\_\_\_ accept the required photographic identification;~~
- ~~(6) \_\_\_\_\_ Is not under the influence of alcohol or another intoxicating or  
hallucinatory drug or substance; and~~
- ~~(7) \_\_\_\_\_ Is not prohibited by Federal law from receiving a firearm.~~

**III. ~~The identification required by Federal law and this rule is:~~**

- (A) ~~(1) \_\_\_\_\_ Photographic identification issued by the agency from which the  
\_\_\_\_\_ individual separated from service as a law enforcement officer  
\_\_\_\_\_ that \_\_\_\_\_ indicates that the individual has, not less recently than  
\_\_\_\_\_ one year before the \_\_\_\_\_ date the individual is carrying the  
\_\_\_\_\_ concealed firearm, been tested or \_\_\_\_\_ otherwise found by the  
\_\_\_\_\_ agency to meet the active duty standards for qualification in  
\_\_\_\_\_ firearms training as established by the agency to carry a  
\_\_\_\_\_ firearm of the same type as the concealed firearm; or~~
- ~~\_\_\_\_\_ (2) \_\_\_\_\_ Photographic identification issued by the agency from which the  
\_\_\_\_\_ individual separated from service as a law enforcement officer;  
\_\_\_\_\_ and~~
- (B) ~~A certification issued by a certified firearms instructor that is qualified  
to conduct a firearms qualification test for active duty officers within  
that state that indicates that the individual has, not less than 1 year  
before the date the individual is carrying the concealed firearm, been  
tested or otherwise found by a certified firearms instructor that is~~

~~qualified to conduct a firearms qualification test for active duty officers within that state to have met the active duty standards for qualifications in firearms training, set by any law enforcement agency, within the state to carry a firearm of the same type as the concealed firearm.~~

#### ~~IV. — **Renewal of the Authority to Carry Concealed Firearms**~~

~~(A) — Pursuant to the Law Enforcement Officer Safety Act Improvements Act of 2010, the authority to carry concealed weapons must be renewed annually, at the expense of the individual, through the successful completion of an approved active duty firearms qualification course. Failure to successfully complete the course will cause the authority to carry concealed firearms to be rescinded.~~

~~Repealed February 7, 2014~~

## **Rule 28 – In-Service Training Program**

*Effective ~~July 1, 2018~~ **JANUARY 30, 2018***

The purpose of in-service training is to provide continuing education to certified peace officers to develop their knowledge and/or skills. The annual in-service training program is defined in Colorado Revised Statutes §24-31-303 (I) and states that the POST Board can “promulgate rules deemed necessary by the Board concerning annual in-service training requirements for certified peace officers, including but not limited to evaluation of the training program and processes to ensure substantial compliance by law enforcement agencies and departments.” In-service training is mandatory for certified peace officers who are currently employed in positions requiring certified peace officers as defined in Colorado Revised Statutes section 16-2.5-102. This includes certified fulltime, part-time and reserve peace officers.

### **(a) Annual Hour Requirement**

The in-service training program requires certified peace officers to complete a minimum of 24 hours of in-service training annually. Of the 24 hours, a minimum of 12 hours shall be perishable skills training as specified below.

### **(b) Training Period**

The training period shall be the calendar year, from January 1 to December 31, of each year. In-service training in excess of 24 hours each year shall not be credited towards any future or prior training period.

### **(c) Approved Training for POST Credit**

The authority and responsibility for training shall be with the chief executive of each law enforcement agency. The chief executive accepts responsibility and liability for the course content and instructor qualification. Legislatively mandated training may also be used for credit towards the training requirement.

The following are examples of training that would qualify for in-service credit:

- (I) Training received during the Basic Academic Training Program (Basic Academy).**
- (II) Computer or web-based courses that have been approved by the chief executive officer may be used for in-service credit.**

- (III) The viewing of law enforcement related audiovisual material (DVD, video, etc.) or material related to the viewer's position or rank can be used in conjunction with a facilitated discussion or other presentation. This could include roll call or lineup briefings where the session is dedicated to training and not for the purpose of information exchange.
- (IV) For each class hour attended at an accredited college or university in any course related to law enforcement or criminal justice that is required to earn a degree, one hour of in-service credit may be awarded.

(d) Perishable Skills Training

Perishable skills training shall consist of a minimum of 12 hours. The required 12 hours must include a minimum of one hour of training in each of the three perishable skills (Arrest Control, Driving, and Firearms) each calendar year. Examples of perishable skills training could include:

- (I) Arrest Control-live or simulator exercises and scenarios, classroom discussion followed by interactive scenario events. Arrest control fundamentals, agency policies and/or legal issues.
- (II) Driving-behind-the-wheel or simulator training, classroom discussion regarding judgment/decision making in driving, agency policies and/or legal issues.
- (III) Firearms-live or simulator exercises and scenarios, firearms fundamentals, use of force training or discussions, classroom training requiring student interaction and/or decision making, classroom discussion on agency policies and/or legal issue. ***FIREARMS QUALIFICATION ALONE IS INSUFFICIENT TO MEET THIS MANDATE.***

(e) Agency Maintenance of Training Records

The chief executive of each agency is responsible for the accurate tracking of training attendance into the POST records management system.

***AGENCIES ARE ENCOURAGED TO ENTER TRAINING AS IT OCCURS, BUT SHALL ENTER TRAINING NO LATER THAN*** At the end of each calendar year ***FOR THE CERTIFIED PEACE OFFICERS EMPLOYED AT ANY TIME DURING THAT YEAR,*** ~~agencies shall have accurately entered all training for the certified peace officers employed at~~



~~any time during the year~~ regardless of current employment status. This information shall be entered into the POST records management system.

(I) Waiver of In-Service Requirements

All certified peace officers shall meet the minimum annual hours. However, under circumstances listed below, an agency may request a waiver for a portion of the annual in-service training requirement. Any waiver of the annual training request must be made in writing to the POST Director by January 31<sup>st</sup> of the following year.

(A) Perishable Skills Waiver

Agency executives may request an exemption from the perishable skills training requirement. This request shall be in writing to the POST Director. This request shall state that either their certified peace officers do not carry firearms, or they infrequently interact with or effect physical arrests, or they do not utilize marked or unmarked emergency vehicles as part of their normal duties.

(B) Partial Year Employment Waiver

The 24 hours of in-service training is required if a certified peace officer is employed for the entire calendar year. Certified peace officers who are employed after the start of the calendar year only need to complete a prorated number of training hours. Therefore, ~~one hour per month of regular~~ **TWO HOURS OF TRAINING PER MONTH, WITH A MINIMUM OF ONE HOUR** training and ~~one hour a month~~ of perishable skills training shall be required. (Example: If a certified peace officer is hired in July, ~~six~~ **TWELVE** hours of regular training ~~and~~ **WITH A MINIMUM OF** six hours of perishable skills training ~~should~~ **MUST** be completed for that calendar year).

(C) Long Term Disability, Medical Leave or Restricted Duty

If a certified peace officer is unable to complete the in-service annual hours due to long term disability, medical leave or restricted duty, the agency must obtain a letter from a physician stating that participation in any type of training including audiovisual or online training would be detrimental to the officer's health. The letter should define the time that the officer is unable to attend any training. Those granted a waiver

will be on a prorated basis for the time stated in the physician's letter. The agency does not need to forward the physician's letter to POST but only reference it in a waiver request.

(D) Military Leave

Those certified peace officers deployed in military service only need to complete a prorated number of training hours.

**(E) ADMINISTRATIVE LEAVE**

***IF A CERTIFIED PEACE OFFICER IS UNABLE TO COMPLETE THE IN-SERVICE ANNUAL HOURS DUE TO PLACEMENT ON ADMINISTRATIVE LEAVE, THE OFFICER MUST COMPLETE A PRORATED NUMBER OF TRAINING HOURS.***

(II) Compliance

(A) Agencies are required to be in compliance with the in-service program.

(B) POST will send out a preliminary compliance report following each training period. The report will provide the compliance status of each agency and its certified peace officers. Agencies shall have thirty (30) days from the date of the preliminary report to dispute the POST data and provide additional training information. Following the thirty-day period, POST will distribute the final compliance reports to all agencies.

(C) ***POST MAY DECLARE AN AGENCY NONCOMPLIANT AFTER THE FINAL COMPLIANCE REPORT HAS BEEN ISSUED IF NEW INFORMATION IS DISCOVERED.***

(~~C~~**D**) Once the final compliance report has been sent to all agencies; an agency seeking to appeal the POST data must do so within thirty (30) days of being notified of failure to comply with Rule 28. Agencies may appeal this by following the process outlined in Rule 5-Hearings. Upon conclusion of all appeal hearings POST will issue a final report indicating whether the agency was found in compliance. If upon the final decision by POST the agency was found not compliant, all POST funding (region grant funds, continuing education funds, and marijuana funds)

to that agency will be suspended from July 1st through December 31st of the same calendar year.

- (~~D~~**E**) The POST Board shall evaluate the program annually following the release of the final compliance reports. Such evaluation will include a review and evaluation of the program. The evaluation may be based on the compliance rate, agency survey and other performance metrics. ~~Agencies shall complete an annual training evaluation survey as part of the substantial compliance measurement by February 1 of each year.~~

## **Rule 1 –Definitions**

*Effective January 30, 2019*

As used in these rules:

- (a) "Academy director" means that person responsible for the administration and operation of a POST-approved academy.
- (b) "Applicant" means any person formally seeking approval by the Board.
- (c) "Appointed" means sworn in and serving as a peace officer or reserve peace officer.
- (d) "Approved" means formally accepted or authorized by the Board.
- (e) "ACT" means Arrest Control Tactics, one of the skills training programs required for the basic and reserve training academies.
- (f) "Assistant skills instructor" means an individual who has successfully completed a relevant approved skills instructor training program and who may instruct the corresponding skills training program in arrest control, law enforcement driving, or firearms under the direction and in the presence of a full skills instructor, and assist in evaluating and coaching trainees at an approved basic or reserve training academy.
- (g) "Authorized emergency vehicle" means such vehicles identified in 42-1-102 C.R.S.
- (h) "Board" means the Colorado Peace Officer Standards and Training Board.
- (i) "Bodily injury" means physical pain, illness, or any impairment of physical or mental condition. § 18-1-901(3)(c), C.R.S.
- (j) "Certification examination" means the written test required under § 24-31-305(1)(a)(III), C.R.S.
- (k) "Certified peace officer" means any person who has successfully attained POST Certification as described in § 24-31-305 and 24-31-308, C.R.S.
- (l) "Course" means a formal unit of instruction relating to a particular subject.
- (m) "C.R.S." means Colorado Revised Statutes, codified laws of the State of Colorado.
- (n) "Director" means the director of the POST Board staff.

- (o) “Disqualifying incident” means:
  - a. A finding of guilt following either a verdict of guilty by the court or jury, or a plea of guilty, or a plea of nolo contendere. Any Colorado juvenile adjudication is not a conviction.
  - b. Entering into a deferred judgment and sentencing agreement, a deferred prosecution agreement, or a pretrial diversion agreement of any disqualifying offense, whether pending or successfully completed.
  - c. Making material false or misleading statements of omissions in the application for certification.
  - d. Otherwise failing to meet the certification requirements established by the board.
- (p) "Enroll" means that a person has applied to and been accepted for admission into an academy and is physically present at the academy to receive instruction.
- (q) "Enrollment date" means the first day of instruction at an approved basic or reserve training academy, and shall be synonymous with the first day of instruction as reflected on the approved academy schedule.
- (r) "Fingerprint-based criminal history record check" means submittal of a POST fingerprint card to the Colorado Bureau of Investigation (CBI) for criminal history check in CCIC and NCIC, as required in § 24-31-304(3), C.R.S.
- (s) "Full skills instructor" means an individual who has successfully completed the minimum qualifications required by these Rules and who may develop, implement and evaluate a skills training program at an approved basic or reserve training academy.
- (t) “Incident” means a single, distinct event as determined by the POST Director or designee.
- (u) "Lateral training academy" means an agency-specific approved academy that instructs academic courses determined by the agency and all hours of the POST skills training programs in arrest control, law enforcement driving and firearms.
- (v) "Lead skills instructor" means a full skills instructor at a basic or reserve training academy who may be designated by the academy director to oversee or coordinate the administration of a specific skills program for a particular academy class.

- (w) "Lesson plan" means a document that specifically describes the material presented during a course of instruction.
- (x) "Moving training" means training where the academy students are involved in movement with a loaded weapon. It is recognized that during square range drills, academy students may move 1-2 steps laterally or forward/backward. The 1:1 ratio is not required for this drill. For all other drills/exercises involving movement a 1:1 ratio is required.
- (y) "Operable firearm" means a firearm that is capable of discharging a bullet if loaded. This does not include firearms designed or modified to discharge marking cartridges or airsoft projectiles during academy reality-based training.
- (z) "Peace officer" means any person recognized in § 16-2.5, Part 1 C.R.S.
- (aa) "POST certified" means any person possessing a valid, numbered certificate issued by the Board authorizing such person to serve as a peace officer or reserve peace officer.
- (bb) "POST fingerprint card" means a fingerprint card provided by POST.
- (cc) "POST Identification Number" (PID) means a number assigned and unique to each active peace officer's certification file. All inquiries and correspondence to POST should contain this number.
- (dd) "Practical Exercise" means role playing, table top exercises, or other scenario-based training.
- (ee) "Program director" means that person responsible for the administration and operation of a POST-approved training program.
- (ff) "Provisional certification" means a signed instrument issued by the POST Board that grants interim certification for qualified out-of-state peace officers seeking Colorado certification that enables the provisional applicant to obtain appointment as a peace officer in Colorado while fulfilling the requirements for basic certification.
- (gg) "Recognized disciplines for arrest control training" mean those defensive tactics systems that have been reviewed and approved by the Board in consultation with the Arrest Control Subject Matter Expert Committee. Such systems may include, but are not limited to, Federal Bureau of Investigation (FBI) system, Koga system and Pressure Point Control Tactics (PPCT) system.

- (hh) "Refresher academy" means an approved training program that consists of a minimum of 96 hours of instruction and includes academics or a POST Board approved web-based distance learning program, arrest control, law enforcement driving and firearms.
- (ii) "Relevant approved skills instructor training program" means a basic, not advanced, instructor training program that contains a minimum of forty (40) hours of instruction and with instructional content that meets or exceeds the content of the respective instructor training programs for arrest control, law enforcement driving, or firearms, and that has been formally accepted or authorized by the Board.
- (jj) "Renewal applicant" means an applicant whose Colorado peace officer certificate has expired per § 24-31-305(1.7)(b), C.R.S., and who has applied to renew his/her Colorado peace officer certificate in accordance with § 24-31-305(1.7)(c), C.R.S. and POST Rule 13.
- (kk) "Reserve peace officer" means any person described in § 16-2.5-110, C.R.S., and includes any person authorized to carry a firearm, conduct arrests, and enforce the laws of the state of Colorado pursuant to § 16-2.5-110, C.R.S., but does not include any person appointed by a sheriff pursuant to § 30-10-506.
- (ll) "Serious bodily injury" means bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree. § 18-1-901(3)(p), C.R.S.
- (mm) "Skills examination" means the approved practical test of an applicant's proficiency in arrest control, law enforcement driving, or firearms.
- (nn) "Skills training" means the required approved arrest control, law enforcement driving, and firearms courses.
- (oo) "State" means any State in the United States, the District of Columbia, and any territory or possession of the United States.
- (pp) "Subject Matter Expert" (SME) means an individual formally recognized by the Board for his or her extensive knowledge, expertise and/or experience in one of the skills areas or in academics.

- (qq) "Successful completion" means a POST-approved academy or program score of seventy (70) percent or greater, or a grade of "C" or better, or a rating of pass, if offered as pass/fail. For the certification examination passing score, see Rule 15.
- (rr) "Test out" means a POST-scheduled skills examination where proficiency is assessed by a POST Subject Matter Expert (SME) in all three perishable skills (Arrest Control, Law Enforcement Driving, and Firearms) and the written POST certification exam is administered.
- (ss) "Training academy" means a POST-approved school, agency or other entity that provides POST-approved training programs.
- (tt) "Training program" means a POST-approved course of instruction required by statute, or Rule, or for peace officer certification and other peace officer training programs as otherwise recognized and approved by the Board.



## **Rule 8 –Process for Seeking Exemption from Statutory Certification Restrictions**

*Effective January 30, 2019*

- (a) The Board has promulgated these rules to ensure orderly and fair treatment of all POST approved training academy, renewal and provisional peace officer applicants. § 24-31-305, C.R.S., requires the POST Board to deny or revoke certification of any person with a disqualifying incident.
- (b) If an applicant anticipates prior to the denial of certification that they will be denied certification on the ground that the applicant has a disqualifying incident, the applicant must provide a fingerprint-based criminal history record check, by submitting fingerprints to the Colorado Bureau of Investigation (CBI) and the Federal Bureau of Investigation (FBI), and request an exemption from denial of certification. When POST receives the criminal history and exemption request, it will process the exemption request using the process described in (c), below.
- (c) To appeal denial of Colorado certification, an applicant or the chief law enforcement officer, if any, of the potential employing agency must submit a written petition to the POST Director, notifying the Board of such disqualifying incident, and requesting the Director grant the applicant an exemption from denial of certification. The petition must fully explain all relevant facts. Any person appealing a denial of certification due to a disqualifying incident has the burden of establishing that:
  - (I) The exemption is consistent with the basic purposes and policies of § 24-31-305, et seq., C.R.S., including § 24-31-305(1.5)(b), if applicable; and
  - (II) Mitigating circumstances exist that warrant exemption; and
  - (III) Certification would be in the public interest; and
  - (IV) A true and accurate copy of the court record with disposition, law enforcement offense/case report from the disqualifying incident, and/or any other relevant documentation of a disqualifying incident, is attached to the petition. If the charging agency no longer has a copy of the report, a letter from the agency verifying that fact should be attached.
- (d) The Director, at their discretion, may determine the merits of the request based upon the applicant's written submissions, or may request additional information.

- (e) Any exemption granted under this rule shall be subject to such limitations or conditions as the Director or Board deems necessary in order to conform to the basic purposes and policies of applicable law.
- (f) The Director's decision may be appealed by following the process outlined in Rule 5 – Hearings.
- (g) In accordance with § 24-31-303(5)(a) and § 24-31-305(1.6)(a)(b), C.R.S., no person may, through an exemption or otherwise, serve as a certified peace officer, as defined in § 16-2.5-102 or § 16-2.5-110, C.R.S., without having first passed the required certification requirements and become certified.

## **Rule 9 – Revocation Hearings for Criminal Conduct**

*Effective January 30, 2019*

- (a) A Colorado peace officer certification issued pursuant to § 24-31-305, C.R.S., shall be suspended or revoked by the POST Board if the certificate holder has:
  - (I) been convicted of a felony, or
  - (II) been convicted on or after July 1, 2001, of any misdemeanor described in subsection (1.5) of § 24-31-305, C.R.S., or,
  - (III) entered into a deferred judgment and sentencing agreement, deferred prosecution agreement, or pretrial diversion agreement for one of the offenses described above, regardless whether the agreement is pending or was successfully completed;
  - (IV) made material false or misleading statements or omissions in the application for certification, or
  - (V) otherwise failed to meet the certification requirements established by the Board.
- (b) The certificate holder or the chief law enforcement officer of the agency employing such certificate holder may, within thirty (30) days after the effective date of the disqualifying incident, petition the Board for an exemption by following the requirements of Rule 8.
- (c) The procedures set forth in Rule 5 shall be utilized with the Director making an initial determination.
- (d) The Director, in his discretion, may determine the merits of the request based upon the applicant's written submissions, or may request additional information.
- (e) A decision by the Director is final unless appealed to the Board within thirty (30) days of the date of such decisions. If a decision is appealed to the Board, the Board will decide whether to hear the appeal. An appeal of the Director's decision must be made in writing and submitted to the POST Director. Upon receipt of the appeal, the POST Director will notify the POST Board members and request a decision be made. If a majority of the POST Board members agree to hear the appeal, a five-member panel of Board members shall proceed to hear the Board appeal. The appeal hearing must commence within thirty (30) days from the date the Board agreed to hear the appeal. The certificate holder will be notified of the Board's action.

This decision, whether summarily affirmed or decided by the board subcommittee, shall be deemed final board action. The applicant will be notified of the Board's action.

## **Rule 10 – Basic Peace Officer Certification**

*Effective January 30, 2019*

- (a) The POST Board is authorized to issue POST Basic Peace Officer Certification to any applicant who meets the following requirements:
  - (I) Possesses and submits a copy of their high school diploma, high school equivalency certificate, or other evidence of successful completion of high school, including official college transcripts or degree; and
  - (II) Possesses and submits a copy of their current first aid and cardiopulmonary resuscitation certification, or equivalents; and
  - (III) Truthfully completes and submits the POST Form 1 - *Application for Basic Peace Officer Certification*; and
    - (A) If previously certified as an officer in another state but is ineligible to apply as a provisional applicant, the applicant must be in good standing with the other certifying state and must complete and submit to POST a POST Form 3 – Application for Provisional Certification and a Release of Information Form within thirty (30) days of starting the academy.
  - (IV) Successfully completes the fingerprint-based criminal history record check required under Rule 14 and meets all of the following requirements:
    - (A) If applicable, submits a copy of their official military discharge documents showing Character of Service other than dishonorable conditions, per § 24-31-301(5), C.R.S.
    - (B) Successfully completes an approved basic training academy, including skills training, and passes the written certification examination within two years of the graduation date; and
    - (C) Submits a copy of their academy certificate of completion
    - (D) Possesses and submits a copy of their current Colorado Driver's License or State-Issued Identification card.
  - (V) Testing is valid for two years from the date of completion. After this time has elapsed, if full certification was not issued, the applicant must successfully complete an additional basic academy program.

- (b) POST Basic Peace Officer Certification qualifies the person to seek employment and serve as a fully authorized peace officer with any Colorado law enforcement agency recognized in Article 2.5 of Title 16, C.R.S.
- (c) Upon issuance of a basic certification, if all training requirements under § 24-31-315 C.R.S. have not previously been met, the individual must complete all requirements within six (6) months from date of appointment.
  - (I) Complete 2 hours of training in each of the following areas: anti-bias, community policing, situational de-escalation, and proper holds and restraints.
- (d) If a basic or reserve certificate holder has not served as a peace officer or reserve peace officer for a total of at least six (6) months during any consecutive three-year period, the certification automatically expires at the end of such three-year period, unless the certificate holder is then serving as a peace officer or reserve peace officer.
  - (I) If a basic or reserve certificate holder is deployed for military service, the certification automatically expires at the end of a three-year period from the date of certification or the date of separation from a Colorado law enforcement agency. If expired, the basic certificate holder is eligible to complete the certification renewal process. If employed at time of deployment, the certificate holder, at the agency's discretion, may remain on the employment roster and their certification will not expire.
- (e) A certified peace officer who has obtained basic certification may maintain current status as a certified peace officer while serving in a reserve peace officer position, recognized in § 16-2.5-110, C.R.S.
- (f) A certified reserve peace officer seeking regular basic peace officer certification may apply their successfully completed skills training, obtained through the reserve peace officer certification program at a POST approved reserve academy, towards basic peace officer certification. Acceptance of the skills training is at the option of the director of the basic peace officer training academy to which the applicant is seeking enrollment.

## **Rule 11 – Provisional Certification**

*Effective January 30, 2019*

- (a) The Board is authorized to issue a provisional certification letter to any applicant who is authorized to serve as a certified peace officer by any other state or federal jurisdiction, excluding the armed forces, which has established minimum law enforcement training standards that are equivalent to the standards established by Colorado as determined by the POST Director. The provisional applicant must be fully certified within the preceding three years and have served as a certified law enforcement officer in a full or part-time status in good standing in such other state or federal jurisdiction for more than one year. The applicant must additionally meet all of the following requirements:
  - (I) Possess and submit a copy of their high school diploma, or high school equivalency certificate, or other evidence of successful completion of high school, including official college transcripts or degree, and;
  - (II) Possess and submit a copy of their current first aid and cardiopulmonary resuscitation certification, or equivalents;
  - (III) Truthfully complete and submit the POST Form 3 – Application for Provisional Certification and a notarized copy of the Release of Information Form;
  - (IV) Successfully complete the fingerprint-based criminal history record check required under Rule 14; and
  - (V) If applicable, submits a copy of their official military discharge documents showing character of service other than dishonorable conditions
  - (VI) Pass the certification examination or, if leaving active out-of-state (the state in which the individual is certified) or federal peace officer employment, pass the certification exam within six (6) months from the date of issuance of the provisional certification.
  - (VII) Must receive Provisional certification within one year of submitting application.
- (b) If an applicant becomes ineligible prior to receiving their provisional certification letter due to time-in-service requirements, the applicant must request and be granted a Rule 7 variance in order to move forward in the provisional process.

- (c) A provisional certification letter authorizes the holder to serve as a certified Colorado peace officer for not more than six (6) months. A provisional certification letter may only be issued one time per year, per person.
- (d) The Board shall issue a basic certificate to the holder of a provisional certification letter if such person satisfies any combination of the following skills proficiency requirements, or, if leaving active out-of-state (the state in which the individual is certified) or recognized federal peace officer employment, satisfies any combination of the following skills proficiency requirements within six (6) months from the date of issuance of the provisional certification:
  - (I) Successfully completes skills training at a POST-approved basic peace officer training academy;
  - (II) Successfully completes a POST-approved refresher academy, including the arrest control, law enforcement driving, and firearms skills training;
  - (III) Passes a test out pursuant to Rule 16 with SME committee members or POST-approved designees who are not members of the applicant's employing agency.
- (e) Upon issuance of a provisional certification and appointment to an agency the individual must comply with training requirements outlined in § 24-31-315 C.R.S within six months of date of appointment.
  - (I) Complete 2 hours of training in each of the following areas: anti-bias, community policing, situational de-escalation, and proper holds and restraints.
- (f) The POST-approved skills instructor must submit the completed *POST Skills Testing Grade Sheet* to POST.
- (g) Persons desiring additional time to complete the basic certification requirements beyond the initial six (6) months provided by the provisional certification letter must submit a variance request to the Director and demonstrate good cause why such additional time should be granted.



## **Rule 12 – Reserve Certification**

*Effective January 30, 2019*

- (a) The Board is authorized to issue a reserve certificate to any applicant who meets the following requirements:
  - (I) Possesses and submits a copy of their high school diploma, or high school equivalency certificate, or other evidence of successful completion of high school, including official college transcripts or degree; and
  - (II) Possesses and submits a copy of their current first aid and cardiopulmonary resuscitation certification, or equivalents; and
  - (III) Truthfully completes and submits the POST Form 2 – Application for Reserve Certification; and
  - (IV) Successfully completes the fingerprint-based criminal history record check required under Rule 14 and meets all of the following requirements:
    - (A) If applicable, submits a copy of their official military discharge documents showing character of service other than dishonorable conditions, per § 24-31-301(5), C.R.S.; and
    - (B) Successfully completes an approved reserve academy including skills training within two (2) years of the graduation date; and
    - (C) Submits a copy of their academy certificate of completion; and
    - (D) Possesses and submits a copy of their current Colorado driver's license or state-issued identification card.
  - (V) Testing is valid for two years from the date of completion. After this time has elapsed, if reserve certification was not issued, the applicant must successfully complete an additional reserve academy program.
- (b) Upon issuance of a reserve certification and appointment to an agency the individual must comply with training requirements outlined in § 24-31-315 C.R.S. within six (6) months.
  - (I) Complete 2 hours of training in each of the following areas: anti-bias, community policing, situational de-escalation, and proper holds and restraints.

- (c) Any law enforcement agency assigning duties to a reserve peace officer beyond those included in the approved reserve training shall assume the responsibility for ensuring that such reserve peace officer is adequately trained for such duties.
- (d) A reserve certification shall expire automatically if the certificate holder is not serving and has not served as a reserve peace officer for at least six (6) months within the previous three (3) years.
- (e) Reserve certifications may not be renewed.
- (f) A certified peace officer may maintain current status as a certified peace officer while serving in a reserve peace officer position, recognized in § 16-2.5-110, C.R.S.

## **Rule 13 – Renewal of Basic Certification**

*Effective January 30, 2019*

The Board is authorized to renew a basic certificate for any applicant who:

- (a) Has not served as a peace officer or reserve peace officer within the previous three (3) years; and
- (b) Possesses and submits a copy of their current first aid and cardiopulmonary resuscitation certification, or equivalents; and
- (c) Truthfully completes and submits the POST Form 4 – Application for Renewal of Basic Certification; and
  - (I) If an applicant has worked in another state as a certified peace officer after being certified in Colorado, they must truthfully complete and submit the POST Form 3 – Application for Provisional Certification, and a notarized copy of the Release of Information Form; and
- (d) Successfully completes the fingerprint-based criminal history record check required under Rule 14; and
- (e) Passes the certification examination pursuant to Rule 15; and
- (f) Satisfies any combination of the following skills proficiency requirements:
  - (I) Successfully completes skills training at a POST approved basic peace officer training academy;
  - (II) Successfully completes a POST approved refresher academy, including the arrest control, law enforcement driving, and firearms skills training;
  - (III) Passes a test out pursuant to Rule 16 with SME committee members or POST approved designees who are not members of the applicant's employing agency.
- (g) The POST-approved skills instructor must submit the completed *POST Skills Testing Grade Sheet* to POST.
- (h) Individuals renewing their certification must complete physical and psychological examinations pursuant to § 24-31-303(5), C.R.S. prior to becoming employed.

- (i) Upon renewal of a Colorado basic peace officer certification and appointment to an agency the individual must comply with training requirements outlined in C.R.S. §24-31-315 within six (6) months.
  - (I) Complete 2 hours of training in each of the following areas: anti-bias, community policing, situational de-escalation, and proper holds and restraints.

## **Rule 14 – Fingerprint-Based Criminal History Record Check**

*Effective January 30, 2019*

- (a) Definitions.
  - (I) The fingerprint-based criminal history record check is a computerized search of a person's fingerprints that have been taken on a POST Applicant Fingerprint Card, or by a Colorado Bureau of Investigations (CBI) authorized vendor, and processed by CBI and the Federal Bureau of Investigation (FBI) for the purpose of determining a person's eligibility for certification as a peace officer in the State of Colorado.
  - (II) The enrollment date of a training academy is the first day of instruction at an approved basic or reserve training academy. The enrollment date shall be synonymous with the first day of instruction as reflected on the approved academy schedule.
  - (III) As used in this Rule, to enroll in an academy means that a person has applied and been accepted for admission into an academy and is physically present at the academy to receive instruction.
- (b) Eligibility for certification. No person shall be eligible for certification as a Colorado peace officer if he or she has been convicted of a felony or any misdemeanor as referenced in § 24-31-305(1.5), C.R.S., or any misdemeanor in violation of federal law or the law of any state or any local municipal ordinance that is the equivalent of any of the offenses specified in § 24-31-305(1.5), C.R.S.
- (c) Enrollment. Pursuant to § 24-31-304, C.R.S. and POST Rules, all persons seeking to either enroll in a training academy or participate in the testing process as a provisional or renewal applicant shall submit their fingerprints to CBI prior to enrolling in the training academy or prior to participating in the testing process as a provisional or renewal applicant.
- (d) POST Applicant Fingerprint Card.
  - (I) The POST Applicant Fingerprint Card is the only authorized fingerprint card that shall be submitted for the fingerprint-based criminal history record check.
  - (II) The Board recommends that a person's fingerprints be taken on the POST Applicant Fingerprint Card at a law enforcement agency, or

submitted electronically by a CBI-authorized vendor. Any fee that may be charged by the agency or vendor for this service is the responsibility of the applicant.

- (III) Payment of a fee to cover the cost of processing the POST Applicant Fingerprint Card must be submitted to CBI with each completed POST Applicant Fingerprint Card, or with submission by a CBI-authorized vendor. Remittance of this fee to CBI is the responsibility of the applicant.
  - (IV) For provisional and renewal applicants, the POST Applicant Fingerprint Card will be provided by POST. The applicant is responsible for having his or her fingerprints taken and for ensuring that the completed POST Applicant Fingerprint Card and fee are submitted to CBI, or that fingerprints are submitted to CBI by a CBI-authorized vendor, prior to the applicant's participation in the testing process as a provisional or renewal applicant.
  - (V) For persons seeking to enroll in a basic or reserve training academy, the POST Applicant Fingerprint Card will be provided by the academy. The person's fingerprints shall be taken in accordance with the academy's policies and procedures. The academy is responsible for ensuring that the completed POST Applicant Fingerprint Card and fee are submitted to CBI, or that fingerprints are submitted to CBI by a CBI-authorized vendor, prior to the person's enrollment in the academy.
  - (VI) Fingerprint returns are valid for one year. Individuals re-enrolling into an academy must be reprinted if the prior fingerprints are older than one year.
- (e) Results from completed criminal history record checks.
- (I) The Board shall be the authorized agency to receive the results from all POST Applicant Fingerprint Cards/submissions that have been processed for the state and national fingerprint-based criminal history record checks.
  - (II) All results from the completed criminal history record checks will be provided to the POST Director. Notice of subsequent arrests and convictions resulting in denial of certification will be provided to the Board.

(f) Basic and reserve training academies.

- (I) A training academy shall not enroll any person who has been convicted of an offense that would result in the denial of certification pursuant to § 24-31-305(1.5), C.R.S. The only exception shall be if the Board has granted the person an exemption from denial of enrollment pursuant to § 24-31-304(4)(a), C.R.S. and POST Rule 7, *Variances*.
- (II) No person shall be enrolled in a training academy unless the person has been fingerprinted on a POST Applicant Fingerprint Card and an academy has submitted the person's completed POST Applicant Fingerprint Card and fee to CBI, or fingerprints have been submitted by a CBI-authorized vendor, prior to enrolling the person in the academy.
- (III) A POST Form 11-E, *Enrollment Advisory Form*, shall be completed on the first day of the academy by both the person enrolled in the academy and the academy director or designee. The completed *Enrollment Advisory Form* shall be maintained at the academy.
- (IV) The academy director shall ensure that an accurate and complete enrollment roster for each academy class is received at POST electronically by the tenth (10) day after the academy commences. The enrollment roster will be completed on the template provided by POST to the academy director.
  - (A) The enrollment roster must be fully completed with all personal information, education, military service, etc. and returned to POST staff. After entry, the roster will be returned to the academy director with assigned PID numbers.
- (V) If the results of a criminal history record check reveal that a person currently enrolled in an academy is prohibited from enrolling pursuant to § 24-31-304(2), C.R.S., the Board or its designated representative(s) shall notify the academy. The academy shall take appropriate measures to immediately dismiss the person from the academy.

(g) Exemption from denial of enrollment.

- (I) If a person anticipates that he or she will be prohibited from either enrolling in a training academy or participating in the testing process as a provisional or renewal applicant because he or she has been convicted of any misdemeanor described in § 24-31-305(1.5), C.R.S., the person may submit a request for exemption from denial of enrollment under

POST Rule 8, *Appeal Process for Peace Officer Applicants - Certification Denial as a Result of a Misdemeanor Conviction.*

- (II) Only if the person has, in fact, submitted a request for exemption from denial of enrollment under POST Rule 8, *Appeal Process for Peace Officer Applicants - Certification Denial as a Result of a Misdemeanor Conviction*, and the request has been granted by the Board, will the person be permitted to either enroll in a training academy or participate in the testing process as a provisional or renewal applicant.
- (III) No person convicted of a felony may request an exemption from denial of enrollment.



## **Rule 19 – Vehicle Identification Number Inspectors**

*Effective January 30, 2019*

Any person seeking certification as a Vehicle Identification Number Inspector must meet each of the following requirements:

- (a) Currently serving as a peace officer recognized in Title 16, Article 2.5 of the Colorado Revised Statutes or as “Inspector” defined in Title 42 Article 5 of the Colorado Revised Statutes; and
- (b) Successfully completes and submits his/her certificate of completion from an approved Vehicle Identification Number course; and
- (c) Completes and submits the POST Form 9 – *Application for VIN Inspector Certification*.

**Rule 24 – Skills Training Safety and Skills Program  
Requirements for Basic and Reserve Academies**

*Effective January 30, 2019*

- (a) For ALL skills training programs: arrest control, law enforcement driving and firearms
  - (I) A daily schedule is required.
    - (A) The daily schedule shall be in addition to the lesson plan requirement of Rule 21, *Basic and Reserve Training Academies*.
    - (B) The daily schedule shall contain the information described in each of the skills training programs: Arrest Control Training Program, Law Enforcement Driving Program, and Firearms Training Program.
    - (C) The format, number of pages and organization of information on the daily schedule(s) shall be at the discretion of the primary skills instructor and/or academy director.
  - (II) Written daily attendance records are required.
    - (A) Written attendance records for all dates of skills training shall be maintained for all trainees enrolled in the skills training program AND for all skills instructors who teach any portion of the skills training program; and
    - (B) Attendance records shall be accurate and up-to-date and must be available during POST inspections of the skills program in progress.
  - (III) Site safety plans are required.
    - (A) Each site of skills training must have an up-to-date and approved written site safety plan present on site during any academy training at the site; and
    - (B) All academy staff members, instructors and trainees shall be familiar with the content of each site safety plan as it pertains to the nature and scope of their involvement with the academy.
  - (IV) For all hours of all skills training programs, 100% attendance and participation are mandatory.

- (V) There must be at least one full skills instructor present at the site of instruction for each skills training session, excluding lecture-only sessions conducted in a classroom setting.
- (VI) Successful completion is required.
  - (A) For the Arrest Control Training Program and the Law Enforcement Driving Program, the minimum requirement for successful completion is seventy percent (70%); and
    - (1) Each academy may apply a higher standard for successful completion of any portion of the skills training program that is greater than seventy percent (70%); and
    - (2) If such a higher standard is applied, the higher standard must be described in the respective skills lesson plan and in the Trainee Manual.
  - (B) For the Firearms Training Program, the mandatory requirement for successful completion of the Handgun Qualification Course is to fire the course exactly as prescribed in the Firearms Training Program with all rounds being on the silhouette.
- (b) Arrest control training
  - (I) There must be at least one arrest control instructor for every ten (10) trainees (*i.e.*, 1:10 ratio) during any practicum or lab session.
  - (II) No practicum or lab session may exceed eight (8) hours in any one-day.
  - (III) Mats or mat coverings must be serviceable and cleaned on a regular basis and immediately before use with an appropriate cleansing agent and/or disinfectant.
  - (IV) Only those arrest control disciplines that have been reviewed and approved as recognized disciplines for arrest control training are acceptable instruction for the Arrest Control Training Program.
  - (V) Each academy shall ensure that all arrest control instructors maintain current certification for the academy's arrest control discipline in accordance with the standards for recertification, if any, of the recognized discipline for arrest control training.

- (VI) All trainees must successfully complete a skills test out and written examination in accordance with the discipline being taught. If the program does not have a test out, then each trainee at a minimum must successfully complete the arrest control skills test as used in the POST provisional/renewal of certification process.
- (VII) All academy Arrest Control Training programs must be comprised of at least 60% lab hours. Lab hours are defined as any hands-on skills training.
- (VIII) Operable firearms, as defined in POST Rule 1, shall not be utilized during any arrest control training.

(c) Law enforcement driving training

- (I) There must be at least one driving track vehicle and one law enforcement driving instructor for every six (6) trainees (*i.e.*, 1:6 ratio) during any instruction at the track.
- (II) No track exercise and/or practicum may exceed twelve (12) hours in any 24-hour period.
- (III) Academy directors shall ensure that no trainee be permitted to participate in a law enforcement driving program unless the trainee possesses a valid driver's license.
- (IV) There must be at least one (1) fully charged five (5) pound size or larger, dry chemical, Class ABC fire extinguisher on site during any instruction at the track.
- (V) Prior to receiving any nighttime Law Enforcement Driving Program instruction at the track, each trainee shall receive a minimum of twelve (12) hours of daylight driving instruction at the track.
- (VI) Night driving shall start no earlier than thirty (30) minutes prior to sunset.
- (VII) Operable firearms, as defined in POST Rule 1, shall not be utilized during any law enforcement driving training.

(d) Firearms training

- (I) There must be at least one firearms instructor for every four (4) trainees enrolled in the academy program (*i.e.*, 1:4 ratio) anytime a

trainee is handling an operable firearm, whether loaded or unloaded, at any location, including in the classroom and at the range, except as noted in the following paragraph (III). This 1:4 instructor to trainee ratio shall not include the instructor running the range exercise. For live fire tactical exercises, drills, and dim light shooting that requires movement, the instructor to trainee ratio shall be 1:4 with an emphasis on the four (4) rules of firearms safety.

- (II) No range exercise and/or lab session may exceed eight (8) hours in any one day.
- (III) For all decisional shooting scenarios, there must be an instructor to trainee ratio of 1:1.
- (IV) Only POST approved firearms instructors and not agency trained safety officers may be utilized to satisfy the minimum ratios of firearms instructors to trainees.
- (V) Prior to receiving any dim light firearms instruction at the range, each trainee shall receive a minimum of forty (40) hours of Firearms Training Program instruction, to include at least eight (8) hours of classroom lecture and thirty-two (32) hours of daylight live range instruction.
- (VI) Dimlight live-fire shooting shall start no earlier than thirty (30) minutes prior to sunset. Indoor ranges are exempt from sunset requirement.
- (VII) Only high-visibility, fluorescent colored “dummy” ammunition may be used for any weapons handling other than actual live fire shooting.
- (VIII) Trainees must be provided written and oral reminders over the course of the training of the four (4) rules of firearms safety:
  - (A) All weapons must be treated as if they are always loaded; and
  - (B) Never let the muzzle of a weapon point at anything you are not willing to destroy; and
  - (C) Keep your finger off the trigger and out of the trigger guard until the sights are on the target and you are prepared to shoot; and
  - (D) Always be certain of the target and beyond.

- (IX) All trainees must be familiar with the four (4) rules of firearms safety prior to handling any operable firearm.
- (X) Firearms ranges must display some type of visual notification (range flag, signs, lights, or other) whenever the range is being utilized for live fire.
- (XI) Each trainee must fire the minimum number of live rounds of handgun ammunition in a single weapons system, revolver or semi-automatic, as stipulated in the current POST firearms training program, before completing the program.

**Rule 27 – Retired Law Enforcement Officer Authority to  
Carry Concealed Firearms**

Repealed February 7, 2014

## **Rule 28 – In-Service Training Program**

*Effective January 30, 2019*

The purpose of in-service training is to provide continuing education to certified peace officers to develop their knowledge and/or skills. The annual in-service training program is defined in Colorado Revised Statutes §24-31-303 (I) and states that the POST Board can “promulgate rules deemed necessary by the Board concerning annual in-service training requirements for certified peace officers, including but not limited to evaluation of the training program and processes to ensure substantial compliance by law enforcement agencies and departments.” In-service training is mandatory for certified peace officers who are currently employed in positions requiring certified peace officers as defined in Colorado Revised Statutes section 16-2.5-102. This includes certified fulltime, part-time and reserve peace officers.

### **(a) Annual Hour Requirement**

The in-service training program requires certified peace officers to complete a minimum of 24 hours of in-service training annually. Of the 24 hours, a minimum of 12 hours shall be perishable skills training as specified below.

### **(b) Training Period**

The training period shall be the calendar year, from January 1 to December 31, of each year. In-service training in excess of 24 hours each year shall not be credited towards any future or prior training period.

### **(c) Approved Training for POST Credit**

The authority and responsibility for training shall be with the chief executive of each law enforcement agency. The chief executive accepts responsibility and liability for the course content and instructor qualification. Legislatively mandated training may also be used for credit towards the training requirement.

The following are examples of training that would qualify for in-service credit:

- (I) Training received during the Basic Academic Training Program (Basic Academy).
- (II) Computer or web-based courses that have been approved by the chief executive may be used for in-service credit.



- (III) The viewing of law enforcement related audiovisual material (DVD, video, etc.) or material related to the viewer's position or rank can be used in conjunction with a facilitated discussion or other presentation. This could include roll call or lineup briefings where the session is dedicated to training and not for the purpose of information exchange.
- (IV) For each class hour attended at an accredited college or university in any course related to law enforcement or criminal justice that is required to earn a degree, one hour of in-service credit may be awarded.

(d) Perishable Skills Training

Perishable skills training shall consist of a minimum of 12 hours. The required 12 hours must include a minimum of one hour of training in each of the three perishable skills (Arrest Control, Driving, and Firearms) each calendar year. Examples of perishable skills training could include:

- (I) Arrest Control-live or simulator exercises and scenarios, classroom discussion followed by interactive scenario events. Arrest control fundamentals, agency policies and/or legal issues.
- (II) Driving-behind-the-wheel or simulator training, classroom discussion regarding judgment/decision making in driving, agency policies and/or legal issues.
- (III) Firearms-live or simulator exercises and scenarios, firearms fundamentals, use of force training or discussions, classroom training requiring student interaction and/or decision making, classroom discussion on agency policies and/or legal issue. Firearms qualification alone is insufficient to meet this mandate.

(e) Agency Maintenance of Training Records

The chief executive of each agency is responsible for the accurate tracking of training attendance into the POST records management system.

Agencies are encouraged to enter training as it occurs, but shall enter training no later than the end of each calendar year for the certified peace officers employed at any time during that year regardless of current employment status. This information shall be entered into the POST records management system.

(I) Waiver of In-Service Requirements

All certified peace officers shall meet the minimum annual hours. However, under circumstances listed below, an agency may request a waiver for a portion of the annual in-service training requirement. Any waiver of the annual training request must be made in writing to the POST Director by January 31<sup>st</sup> of the following year.

(A) Perishable Skills Waiver

Agency executives may request an exemption from the perishable skills training requirement. This request shall be in writing to the POST Director. This request shall state that either their certified peace officers do not carry firearms, or they infrequently interact with or effect physical arrests, or they do not utilize marked or unmarked emergency vehicles as part of their normal duties.

(B) Partial Year Employment Waiver

The 24 hours of in-service training is required if a certified peace officer is employed for the entire calendar year. Certified peace officers who are employed after the start of the calendar year only need to complete a prorated number of training hours. Therefore, two hours of training per month, with a minimum of one hour of perishable skills training shall be required. (Example: If a certified peace officer is hired in July, 12 hours of training with a minimum of six hours of perishable skills training must be completed for that calendar year).

(C) Long Term Disability, Medical Leave or Restricted Duty

If a certified peace officer is unable to complete the in-service annual hours due to long term disability, medical leave or restricted duty, the agency must obtain a letter from a physician stating that participation in any type of training including audiovisual or online training would be detrimental to the officer's health. The letter should define the time that the officer is unable to attend any training. Those granted a waiver will be on a prorated basis for the time stated in the physician's letter. The agency does not need to forward the physician's letter to POST but only reference it in a waiver request.

(D) Military Leave

Those certified peace officers deployed in military service only need to complete a prorated number of training hours.

- (E) Administrative Leave  
If a certified peace officer is unable to complete the in-service annual hours due to placement on administrative leave, the officer must complete a prorated number of training hours.

(II) Compliance

- (A) Agencies are required to be in compliance with the in-service program.
- (B) POST will send out a preliminary compliance report following each training period. The report will provide the compliance status of each agency and its certified peace officers. Agencies shall have thirty (30) days from the date of the preliminary report to dispute the POST data and provide additional training information. Following the thirty-day period, POST will distribute the final compliance reports to all agencies.
- (C) POST may declare an agency noncompliant after the final compliance report has been issued if new information is discovered.
- (D) Once the final compliance report has been sent to all agencies; an agency seeking to appeal the POST data must do so within thirty (30) days of being notified of failure to comply with Rule 28. Agencies may appeal this by following the process outlined in Rule 5-*Hearings*. Upon conclusion of all appeal hearings POST will issue a final report indicating whether the agency was found in compliance. If upon the final decision by POST the agency was found not compliant, all POST funding (region grant funds, continuing education funds, and marijuana funds) to that agency will be suspended from July 1st through December 31st of the same calendar year.
- (E) The POST Board shall evaluate the program annually following the release of the final compliance reports. Such evaluation will include a review and evaluation of the program. The evaluation may be based on the compliance rate, agency survey and other performance metrics.

# Notice of Proposed Rulemaking

**Tracking number**

2018-00590

**Department**

1000 - Department of Public Health and Environment

**Agency**

1005 - Laboratory Services Division

**CCR number**

5 CCR 1005-2

**Rule title**

TESTING FOR ALCOHOL AND OTHER DRUGS

## Rulemaking Hearing

**Date**

12/19/2018

**Time**

10:00 AM

**Location**

4300 Cherry Creek Drive South, Denver, CO 80246

**Subjects and issues involved**

The proposed amendments incorporate HB 18-1302, which authorize the Department to waive certification requirements when an entity is accredited by a nationally or internationally recognized accreditation organization that includes the scope of forensic toxicology. This change aligns the rule to the statute. The substantive standards as to which requirements are waived and the Department's ability to respond to complaints remains unchanged. Additionally, the department proposes changes to align the rule with current industry best practices to include; defining laboratory key personnel, personnel competency assessment practices, providing the laboratories additional flexibility in selecting a proficiency testing provider, and specifying manufacturer criteria that provide quality control materials to the labs. The proposed changes remove rule appendixes A, B, and C and place them into the body of the rule. Lastly, the Department proposes the removal of redundant requirements and make minor grammatical and technical corrections.

**Statutory authority**

§42-4-1304, C.R.S.

§42-4-1301.1, C.R.S.

## Contact information

**Name**

Jeff Groff

**Title**

Evidential Breath Alcohol Testing Program Manager

**Telephone**

303-692-3681

**Email**

jeff.groff@state.co.us



Dedicated to protecting and improving the health and environment of the people of Colorado

To: Members of the State Board of Health

From: Jeff Groff, Manager, Evidential Breath Alcohol Testing (EBAT) Program.

Through: Randy Kuykendall, Director, Laboratory Services Division - *DRK*

Date: October 1, 2018

Subject: **Request for Rulemaking Hearing**  
Proposed Amendments to 5CCR 1005-2 - Testing for Alcohol and Other Drugs  
with a request for a rulemaking hearing to be set for December 19, 2018.

---

The department is requesting approval from the Colorado Board of Health of the proposed changes to 5CCR 1005-2. The purpose of the proposed changes are as follows;

- Alignment of the rule with current statute;
- Alignment of the Forensic Toxicology Laboratory certification requirements with current industry best practices to include International Standards Organization (ISO/IEC 17025) and the American Board of Forensic Toxicologists (ABFT) standards;
- Removal of the current appendices (A,B,C) and include those requirements in the body of the rule; and,
- Removal of redundant requirements and make minor grammatical and technical corrections.

The department has initiated robust stakeholder engagement to include face-to-face meetings and has received many valuable comments and feedback throughout that process. Ongoing engagement will continue with stakeholders until the Rulemaking Hearing scheduled in December 2018.

STATEMENT OF BASIS AND PURPOSE  
AND SPECIFIC STATUTORY AUTHORITY  
for Amendments to  
5CCR 1005-2  
Testing for Alcohol and Other Drugs

Basis and Purpose.

- In January 2018, the Board of Health adopted rules that waived specific laboratory certification requirements for laboratories that are accredited. At the time of the rulemaking, a technical deficiency was acknowledged as the statute only allowed waiver when accreditation was conferred by the American Board of Forensic Toxicology or the International Standards Organization (ISO). The Department and stakeholders acknowledged that under the plain language of the law, entities accredited through the ANSI-ASQ National Accreditation Board (who applies the ISO requirements) were not eligible for waiver of the certification requirements. HB 18-1302 corrected this by authorizing the Board to waive certification requirements when an entity is accredited by “a nationally or internationally recognized accreditation organization that includes the scope of forensic toxicology.” This change aligns the rule to the statute. The substantive standards as to which requirements are waived and the Department’s ability to respond to complaints remains unchanged.
- The proposed rule changes incorporate rules of the Department’s rule review. The proposed changes align the rule with current industry best practices to include; defining laboratory key personnel, personnel competency assessment practices, providing the laboratories additional flexibility in selecting a proficiency testing provider, and specifying manufacturer criteria that provide quality control materials to the labs. The proposed rule changes are consistent with ISO/IEC 17025 and the American Board of Forensic Toxicologists (ABFT) accreditation requirements. These updates ensure that there is consistency in the quality standards between the accredited and non-accredited labs participating in the program.
- The proposed changes remove rule appendixes A, B, and C. Appendix A was moved into Part 3. Appendix B was moved into Part 5. Appendix C was moved into Part 5 and the new Part 9. The requirements are being incorporated into the body of the rule in the applicable parts. This change removes forms from the rule, consolidates redundant requirements and removes outdated historical requirements that are no longer applicable to the technologies and instrumentation.
- The proposed changes communicate the standards required by Section 42-4-1304(1) C.R.S. for the Department to certify individuals who collect samples from the deceased for testing of alcohol, drug and carbon monoxide concentrations “by and appropriately trained person certified by the department of public health and environment”.
- The proposed changes remove references to NIST at 5.4.5.1 as NIST does not certify reference materials. Instead, clarification of what types of manufacturers the laboratories may purchase certified reference materials from is defined at 5.4.5.
- The proposed changes remove the term “Certified” to “Approved” for law enforcement facilities that house the certified EBAT instrumentation as part of the technical clean-up and clarification of the rule language. Section 42-4-1301.1 C.R.S. does not require the department to certify law enforcement facilities and by aligning

the rule language with the department's statutory obligations removes unnecessary layering of additional approvals and certifications and does not alter current process.

- The proposed changes remove redundant and outdated language and make minor grammatical edits.

Specific Statutory Authority.

Statutes that require or authorize rulemaking: Sections 42-1-1301.1 and 42-4-1304, C.R.S.

Statutes that inform or direct the rule content:

Section 42-4-1304, C.R.S. Samples of blood or other bodily substance - duties of department of public health and environment.

(1) The department of public health and environment shall establish a system for obtaining samples of blood or other bodily substance from the bodies of all pilots in command, vessel operators in command, or drivers and pedestrians fifteen years of age or older who die within four hours after involvement in a crash involving a motor vehicle, a vessel, or an aircraft. For purposes of this section, "vessel" has the meaning set forth in Section 33-13-102, C.R.S. No person having custody of the body of the deceased shall perform any internal embalming procedure until a blood and urine specimen to be tested for alcohol, drug, and carbon monoxide concentrations has been taken by an appropriately trained person certified by the department of public health and environment. Whenever the driver of the vehicle cannot be immediately determined, the samples shall be obtained from all deceased occupants of the vehicle.

(4)(a) as revised by HB14-1340:

The certification of laboratories to ensure that the collection and testing of samples is performed in a competent manner, which may include waiving specific certification requirements for laboratories that are accredited by the American board of forensic toxicology, the international standards organization, or a successor to either organization; and

(4)(a) as revised by HB18-1302:

The certification of laboratories to ensure that the collection and testing of samples is performed in a competent manner, which may include waiving specific certification requirements for laboratories that are accredited by a nationally or internationally recognized accreditation organization that includes the scope of forensic toxicology; and

Is this rulemaking due to a change in state statute?

☒ Yes, the bill number is HB 18-1302. Rules are ☐ authorized ☒ required.

☐ No

Does this rulemaking incorporate materials by reference?

☐ Yes ☐ URL or ☐ Sent to State Publications Library

☒ No

Does this rulemaking create or modify fines or fees?

☐ Yes

☒ No

Does the proposed rule create (or increase) a state mandate on local government?

☒ No. This rule does not require a local government to perform or increase a specific activity for which the local government will not be reimbursed. Though the rule does not contain a state mandate, the rule may apply to a local government if the local government has opted to perform an activity, or local government may be engaged as a stakeholder because the rule is important to other local government activities.

☐ No. This rulemaking reduces or eliminates a state mandate on local government.

☐ Yes. This rule includes a new state mandate or increases the level of service required to comply with an existing state mandate, and local government will not be reimbursed for the costs associated with the new mandate or increase in service.

The state mandate is categorized as:

☐ Necessitated by federal law, state law, or a court order

☐ Caused by the State's participation in an optional federal program

☐ Imposed by the sole discretion of a Department

☐ Other: \_\_\_\_\_

Has an elected official or other representatives of local governments disagreed with this categorization of the mandate? ☐ Yes ☒ No

If yes, please explain why there is disagreement in the categorization.

Please elaborate as to why a rule that contains a state mandate on local government is necessary.

N/A



REGULATORY ANALYSIS  
for Amendments to  
5CCR 1005-2  
State Board of Health Rules Pertaining to the Testing for Alcohol and Other Drugs

1. A description of the classes of persons affected by the proposed rule, including the classes that will bear the costs and the classes that will benefit from the proposed rule.

The classes of persons affected are:

Forensic Toxicology Laboratories that are certified by the Department. These include both private and public laboratories.

- Colorado Bureau of Investigation (CBI)\*
- El Paso County Coroner's Office\*
- Denver Police Department Crime Laboratory\*
- Colorado State University Toxicology Laboratory\*
- Chematox Labs, Inc.
- Rocky Mountain Instrumental Labs (RMIL)
- NMS Labs

Individuals who collect samples from the deceased involved in a motor vehicle crash that are used for testing of alcohol, drugs and carbon monoxide concentrations. These include;

- Colorado Coroners\*
- Forensic Pathologists\*
- Coroner Investigators\*
- Coroner Assistants\*
- Emergency Medical Service (EMS) First Responders\*
- Emergency Room and Hospital Personnel\*

- A. Identify each group of individuals/entities that rely on the rule to maintain their own businesses, agencies or operation, and the size of the group:

- CBI\* (12-15 personnel)
- El Paso County Coroner's Office\* (5-6 personnel)
- Denver Police Department Crime Laboratory\* (3-4 personnel)
- Colorado State University Toxicology Laboratory\* (1-2 personnel)
- Chematox Labs, Inc (9-10 personnel)
- Rocky Mountain Instrumental Labs (RMIL) (6-8 personnel)
- NMS Labs (175-180 personnel)
- Colorado Coroners\* (64 coroners)
- Forensic Pathologists\* (15 doctors)
- Coroner Investigators\* (90-100 personnel)
- Coroner Assistants\* (40-50 personnel)

- B. Identify each group of individuals/entities interested in the outcomes the rule and those identified in #1.A achieve, and if applicable, the size of the group

- 6 - Forensic Toxicology Laboratories
- 64 - Coroners and staff
- 15 - Forensic Pathologists
- Colorado Law Enforcement (Colorado State Patrol, Colorado County Sheriff's Organization , Colorado Chiefs of Police Association)\*
- Colorado District Attorneys Counsel\*
- Colorado Bar Association
- Colorado Public Defenders Association\*

C. Identify each group of individuals/Entities that benefit from, may be harmed by or at-risk because of the rule, and if applicable, the size of the group:

The following groups benefit from the rule changes as they help to ensure that alcohol and drug results reported by the forensic toxicology labs certified by the department are accurate, precise and reliable.

- Both Colorado residents and non-residents.
- Colorado Law Enforcement\*
- Colorado Legal Community (District Attorneys, DUI Defense Attorneys, Public Defenders)\*
- Colorado Department of Revenue, Drivers' License Hearing Officers\*
- Colorado Courts\*

\* Local government, local elected officials or organizations connected to local government.

2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

Quantitative Impact:

The proposed changes will have the following quantitative impact:

- The proposed changes to the rules have no impact on accredited forensic toxicology laboratories certified by the department. Currently there are 9 forensic toxicology laboratories certified by the department to perform testing on samples for DUI/DWAI purposes. Of the 9 Department certified laboratories, 5 (CBI-3, NMS-1, DPD-1) are currently accredited by either the American Board of Forensic Toxicologists (ABFT) or by an internationally recognized accrediting organization.
- Revisions to the forensic toxicology certification standards will have minimal to no impact on non-accredited forensic toxicology laboratories certified by the department.
- Individuals who collect samples from the deceased will be required to be certified by the department in order to be compliant with Section 42-4-1304, C.R.S.

Qualitative Impact:

The proposed changes will have the following qualitative impact:

- Alignment with current statutory requirements.
- Consistency in industry best practices for forensic toxicology laboratories.

A. For those that rely on the rule to maintain their own businesses, agencies or operations:

Describe the anticipated favorable and non-favorable non-economic outcomes (short-term and long-term), and if known, the likelihood of the outcomes:

Favorable non-economic outcomes:

- Alignment with current statutory requirements and language.
- The long-term effect is comparable quality standards for accredited and non-accredited laboratories. Non-accredited labs that choose to become accredited in the future will have their processes and procedures in alignment with nationally and internationally recognized standards, thus making the transition to accreditation much easier and cost effective.

Unfavorable non-economic outcomes:

None identified

Anticipated financial impact:

Anticipated Costs:	Anticipated Benefits:
<p>Description of costs that must be incurred.</p> <p>Forensic Toxicology Labs will be required to purchase their own blood alcohol Proficiency Testing (PT) material annually at a nominal cost instead of the Department purchasing them. Most of the labs in the program already do this.</p> <p>Description of costs that may be incurred.</p> <ul style="list-style-type: none"> <li>• None</li> </ul>	<p>Description of financial benefit.</p> <p>Laboratories will be able to decide on what PT material they wish to purchase and for some labs may actual reduce the number of PT samples requiring purchase annually.</p>
<p>Cost or cost range.</p> <p>\$200 - \$300 annually</p>	<p>Savings or range of savings.</p> <p>None</p>
<p>Dollar amounts that have not been captured and why:</p> <ul style="list-style-type: none"> <li>• None</li> </ul>	<p>Dollar amounts that have not been captured and why:</p> <ul style="list-style-type: none"> <li>• None</li> </ul>

Local Government Impact: N/A. To the extent a certified laboratory is operated by local government, this has occurred because the local government has opted to obtain certification and perform these services.

Fiscal Note: Other than the workload costs to update the rule, HB 18-1302 had not fiscal impact.

B. For those that are affected by or interested in the outcomes the rule and those identified in #1.A achieve.

Describe the favorable or unfavorable outcomes (short-term and long-term), and if known, the likelihood of the outcomes:

Favorable non-economic outcomes:

DUI/DUID test results reported by department certified forensic toxicology laboratories and used for criminal and administrative purposes will continue to be current and have the same quality standards of performance regardless of whether the laboratory is accredited.

Unfavorable non-economic outcomes:

None identified.

Any anticipated financial costs monitored by these individuals/entities?

None identified.

Any anticipated financial benefits monitored by these individuals/entities?

None identified.

C. For those that benefit from, are harmed by or are at risk because of the rule, the services provided by individuals identified in #1.A, and if applicable, the stakeholders or partners identified in #1.B.

Describe the favorable or unfavorable outcomes (short-term and long-term), and if known, the likelihood of the outcomes:

Long-term benefit to those identified in #1.B and #1.C is continued confidence in the test results reported by the department-certified forensic toxicology laboratories. The test results are relied upon by law enforcement and the legal communities statewide for criminal and administrative procedures. Residents and non-residents who are charged with a DUI/DUID offense will have their samples tested by laboratories that are operating to industry best practices and high quality standards.

Financial costs to these individuals/entities:

None identified.

Financial benefits to or cost avoidance for these individuals/entities:

None identified.

3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

A. Anticipated CDPHE personal services, operating costs or other expenditures:

None identified.

Anticipated CDPHE Revenues: N/A

This rulemaking modifies fees: N/A

- B. Anticipated personal services, operating costs or other expenditures by another state agency:

None identified.

Anticipated Revenues for another state agency:

None identified.

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Check mark all that apply:

- ☐ Inaction is not an option because the statute requires rules be promulgated.
- ☒ The proposed revisions are necessary to comply with federal or state statutory mandates, federal or state regulations, and department funding obligations.
- ☒ The proposed revisions appropriately maintain alignment with other states or national standards.
- ☒ The proposed revisions implement a Regulatory Efficiency Review (rule review) result, or improve public and environmental health practice .
- ☒ The proposed revisions implement stakeholder feedback.
- ☐ The proposed revisions advance the following CDPHE Strategic Plan priorities:

Goal 1, Implement public health and environmental priorities  
 Goal 2, Increase Efficiency, Effectiveness and Elegance  
 Goal 3, Improve Employee Engagement  
 Goal 4, Promote health equity and environmental justice  
 Goal 5, Prepare and respond to emerging issues, and  
 Comply with statutory mandates and funding obligations

Strategies to support these goals:

- ☐ Substance Abuse (Goal 1)
- ☐ Mental Health (Goal 1, 2, 3 and 4)
- ☐ Obesity (Goal 1)
- ☐ Immunization (Goal 1)
- ☐ Air Quality (Goal 1)
- ☐ Water Quality (Goal 1)
- ☒ Data collection and dissemination (Goal 1, 2, 3, 4 and 5)
- ☐ Implements quality improvement or a quality improvement project (Goal 1, 2, 3 and 5)
- ☐ Employee Engagement (career growth, recognition, worksite wellness) (Goal 1, 2 and 3)
- ☐ Incorporate health equity and environmental justice into decision-making (Goal 1, 3 and 4)

\_\_\_ Establish infrastructure to detect, prepare and respond to emerging issues (Goal 1, 2, 3, 4, and 5)

\_\_\_ Other favorable and unfavorable consequences of inaction:

- None identified

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

Rulemaking is proposed when it is the least costly method or the only statutorily allowable method for achieving the purpose of the statute. The specific revisions proposed in this rulemaking were developed in conjunctions with stakeholders. The benefits, risks and costs of these proposed revisions were compared to the costs and benefits of other options. The proposed revisions provide the most benefit for the least amount of cost, are the minimum necessary or are the most feasible manner to achieve compliance with statute.

6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.

See response #4 and #5.

7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.

- Stakeholder Feedback from Forensic Toxicologists and Forensic Toxicology Laboratory Directors
- ISO/IEC 17025 standards
- ABFT accreditation standards
- Current Colorado Revised Statutes (C.R.S.)

**STAKEHOLDER ENGAGEMENT**  
for Amendments to  
5CCR 1005-2  
State Board of Health Rules Pertaining to the Testing of Alcohol and Other Drugs

State law requires agencies to establish a representative group of participants when considering to adopt or modify new and existing rules. This is commonly referred to as a stakeholder group.

Early Stakeholder Engagement:

The following individuals and/or entities were identified as the primary stakeholders and invited to provide input and included in the development of these proposed rules:

<b>Organization</b>	<b>Representative</b>
Colorado Coroner's Association	Randy Gorton - Vice President
Colorado Coroners Standards and Training Board (CCTSB)	Anne Strawbridge - Secretary
Colorado Bureau of Investigation (CBI)	Dan Anderson - Lab Director
El Paso County Coroner's Office	Dr. Robert Bux - Lab Director
Denver Police Department Crime Lab	Dr. Greg LaBerge - Lab Director
Colorado State University Toxicology Lab	Dr. Greg Dooley - Lab Director
Chematox Labs, Inc	Sarah Urfer - Lab Director
NMS Labs, Inc	Dr. Margaret Beemer - Lab Director
Rocky Mountain Instrumental Labs (RMIL)	Dr. Robert Lantz - Lab Director

Stakeholder engagement was initiated in late May 2018. Requests for feedback and comments were made by the department to the primary stakeholders listed in #1A and feedback was provided. Proposed changes were made to the existing language and sent back to the identified primary stakeholders for additional comments and feedback which was also provided. Department staff have also met with the Colorado Coroner's Association (CCA) Board of Directors during their annual meeting in June 2018. An onsite meeting to further discuss the proposed changes was held at the Laboratory Services Division on July 26<sup>th</sup> where additional comments and suggestions were received and incorporated. The revised draft was sent out again in September to the primary stakeholders for review and to offer opportunity to make any further comments.

The stakeholders identified in #1B were also notified of the rule revisions and provided the link to the draft document on the department's website. The secondary stakeholders identified in #1B were also provided opportunity to offer any comments.

All comments and feedback received from stakeholders and partners have been reviewed and when applicable, incorporated into the draft rule revision. The Department will continue to collect feedback. If necessary, additional onsite meetings may be scheduled with stakeholders and partners to finalize the proposed changes prior to the anticipated December 2018 hearing.

Stakeholders and partners are generally pleased with the process thus far and for the opportunity to be included in the rule making. The consensus is positive and agreement on the proposed changes is being achieved.

Stakeholder Group Notification

The primary stakeholder group was provided notice of the rulemaking hearing and provided a copy of the proposed rules or the internet location where the rules may be viewed. Notice was provided prior to the date the notice of rulemaking was published in the Colorado Register (typically, the 10<sup>th</sup> of the month following the Request for Rulemaking).

- ☒ Not applicable. This is a Request for Rulemaking Packet. Notification will occur if the Board of Health sets this matter for rulemaking.
- ☐ Yes.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

The major policy issue encountered concerned the statutory language found at Section 42-4-1304(1), C.R.S. In discussions with the CCA and the CCSTB, stakeholders questioned whether a health or safety concern was being met through the statute requiring the department to certify the individuals obtaining the specimens to be tested for alcohol, drug, and carbon monoxide concentrations. Individuals who collect samples from the deceased are either currently licensed by the state to practice medicine, perform emergency services, are elected officials who are trained and certified, or are individuals who perform this work under the supervision of licensed and/or certified individuals listed above where their scope of work includes the collection of samples from the deceased. There is no parallel requirement for individuals who collect specimens from living individuals for the same forensic application. Stakeholders opined that this statutory requirement is unnecessary. Stakeholders appreciated the Department's need to comply with statute and the Department appreciated that stakeholders may reach out to their legislative representatives and pursue a repeal of this statutory requirement.



Please identify the determinants of health or other health equity and environmental justice considerations, values or outcomes related to this rulemaking.

None identified.

Overall, after considering the benefits, risks and costs, the proposed rule:

Select all that apply.

	Improves behavioral health and mental health; or, reduces substance abuse or suicide risk.	Reduces or eliminates health care costs, improves access to health care or the system of care; stabilizes individual participation; or, improves the quality of care for unserved or underserved populations.
	Improves housing, land use, neighborhoods, local infrastructure, community services, built environment, safe physical spaces or transportation.	Reduces occupational hazards; improves an individual's ability to secure or maintain employment; or, increases stability in an employer's workforce.
	Improves access to food and healthy food options.	Reduces exposure to toxins, pollutants, contaminants or hazardous substances; or ensures the safe application of radioactive material or chemicals.
	Improves access to public and environmental health information; improves the readability of the rule; or, increases the shared understanding of roles and responsibilities, or what occurs under a rule.	Supports community partnerships; community planning efforts; community needs for data to inform decisions; community needs to evaluate the effectiveness of its efforts and outcomes.
	Increases a child's ability to participate in early education and educational opportunities through prevention efforts that increase protective factors and decrease risk factors, or stabilizes individual participation in the opportunity.	Considers the value of different lived experiences and the increased opportunity to be effective when services are culturally responsive.
	Monitors, diagnoses and investigates health problems, and health or environmental hazards in the community.	Ensures a competent public and environmental health workforce or health care workforce.
X	Other: <u>This rule ensures forensic toxicology laboratories certified by the Department operate in alignment with the current industry standards. Quality laboratory services benefit those involved in criminal or administrative matters.</u>	Other: _____ _____

[COLORADO](#) DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

**Laboratory Services Division**

**TESTING FOR ALCOHOL AND OTHER DRUGS**

**5 CCR 1005-2**

---

Part 1. General

1.1 Purpose and Scope

This rule establishes minimum standards for certification and approval of entities and processes used for alcohol and drug testing. This rule is applicable to: samples taken from subjects driving under the influence, driving while impaired, driving with excessive alcohol content; vehicular assaults and vehicular homicides involving an operator while under the influence of alcohol or one or more drugs or both; the testing of samples of blood or other bodily substances from the bodies of pilots in command, motorboat or sailboat operators in command, or drivers and pedestrians suspected of being impaired by alcohol and/or drugs who die within four hours after involvement in a crash involving a motor vehicle, a motorboat, a sailboat or an aircraft; and consumption of alcohol by underage persons and records related thereto.

1.2 The Colorado department of public health and environment has determined that results obtained from the certified EBAT instrument are scientifically accurate, precise, and analytically reliable when the certified EBAT instrument is properly operated as described in this rule. Recommendations made to the state board of health are evidence-based through analytic testing and evaluation conducted by the department.

1.3 Evidential Breath Alcohol Testing (EBAT) certified facilities, instructors and operators will operate under Parts 2 ~~THROUGH, 3, 4 and Appendix A~~ of these rules and regulations. All [APPROVED](#) EBAT [FACILITES AND](#) certified ~~facilities~~, instructors and operators performing direct evidential breath alcohol testing must comply with all applicable requirements in this rule.

1.4 Testing of blood alcohol, blood drug, urine drug and post-mortem samples operate under Parts 5 ~~THROUGH, 98 and Appendix B and C~~ of these rules and regulations. All certified [FORENSIC TOXICOLOGY](#) laboratories performing [TESTING IN THE CATEGORIES OF](#) blood alcohol, blood drug, urine drug and post-mortem testing must comply with all applicable requirements in this rule.

1.5 Definitions

“Analytical Non-Conformance” – refers to a result that has been reported by the certified laboratory that exceeds its established criteria of acceptability resulting in repeat analysis requiring amended reporting.

“Appropriate Clinical or Public Safety Facility” – provides for the health and safety of a person whose blood is collected (subject) and meets the following criteria: 1) provide for the washing or cleansing of hands of the blood collection personnel, 2) provide a comfortable chair for the subject with arm supports to assure the elbow remains straight and both arms are accessible to the blood collection personnel, 3) take precautions to assure the subject does not fall out of the chair, 4) provide for cot or other reclining surfaces for subjects who prefer to lie down or who have adverse response to the blood collection procedures, 5) provide for the adverse response to

blood collection by providing procedures and equipment for subjects who become faint, nauseous, vomit, bleed excessively, or convulse including the provision of drinking water, and 6) provide for the cleaning and disinfection of the blood collection area.

“APPROVED Facility” – any location that meets the requirements of these regulations and which is APPROVED certified by the Department to house the certified EBAT instrumentation.

“Certification” – the official approval by the Department of an Evidential Breath Alcohol Test (EBAT) instrument, instructor, operator, ~~facility~~ or FORENSIC TOXICOLOGY laboratory to function under these rules and regulations.

“Certified EBAT Instrument” – the instrumentation approved for use by the Department for performing evidential breath alcohol testing in approved facilities by certified instructors and operators in order to determine the alcohol content in a subject’s breath for evidentiary purposes as identified in ~~section~~ Section 42-4-1301, C.R.S.

“Certified EBAT Instructor” – an employee of ~~any approved~~ law enforcement agency or the Colorado Department of Public Health and Environment who meets the requirements of Section 2.2 *et seq.* of these regulations.

“Certified Laboratory” – a FORENSIC TOXICOLOGY laboratory certified by the Department to perform analytical testing of bodily fluids for alcohol or other drugs IN THE CATEGORIES OF BLOOD ALCOHOL, BLOOD DRUG, URINE DRUG OR POSTMORTEM TESTING.

“Certified EBAT Operator” – an employee of ~~any approved~~ law enforcement agency or the Colorado Department of Public Health and Environment who meets the requirements of Section 2.1 *et seq.* of these regulations.

“Department” – refers to The Colorado Department of Public Health and Environment, Laboratory Services Division.

“DUI” – refers to the term ~~D~~driving ~~U~~nder the ~~i~~nfluence of alcohol and/or other drugs as defined by ~~Colorado revised statute~~ SECTION 42-4-1301(1)(f), C.R.S.

“DWAI” – refers to the term ~~D~~driving ~~W~~hile ~~A~~ability ~~i~~mpaired by alcohol and/or other drugs as defined by ~~Colorado revised statute~~ SECTION 42-4-1301(1)(g), C.R.S.

“DUI Packet” -refers to the documentation produced by the certified EBAT instrument that must be included by the certified EBAT instructor or operator. ~~I~~this must include but is not limited to the following; the completed subject EBAT, and any ~~E~~xception ~~M~~essages which may have been encountered during the subject test attempts.

“Evidential” or “Evidentiary” – refers to a sample which, when tested, gives rise to test results that are sufficiently reliable to be admissible as evidence in a court of law.

“Evidential Breath Alcohol Test (EBAT)” – is an evidentiary breath alcohol test performed using a certified evidential breath alcohol testing instrument approved by the Department as described by Section 42-4-1301, C.R.S.

“EXCEPTION MESSAGE” – IS THE TERM USED FOR A REPORT GENERATED BY THE CERTIFIED EBAT INSTRUMENT WHENEVER AN EVIDENTIAL BREATH ALCOHOL TEST (EBAT) IS UNABLE TO BE SUCCESSFULLY COMPLETED.

~~“Facility”—any location that meets the requirements of these regulations and which is certified by the Department to house the certified EBAT instrumentation.~~

“Internal Standard” – refers to a reference material that has similar chemical and physical properties to the analyte being measured and is added at a known concentration to a sample prior to testing.

“KEY MANAGEMENT” — REFERS TO PERSONNEL DESIGNATED AS TOP MANAGEMENT AND ADDITIONAL PERSONNEL WHO DO NOT HAVE LABORATORY –WIDE AUTHORITY BUT ARE “KEY” TO THE LABORATORY PROVIDING TESTING SERVICES WHICH MAY INCLUDE THE LABORATORY DIRECTOR, TECHNICAL PERSONNEL OR ANY OTHER DESIGNATED QUALIFIED INDIVIDUAL WHO HAS SUPERVISORY RESPONSIBILITIES FOR THE SCIENTIFIC ASPECTS OF THE LABORATORY.

“Laboratory Director” – the individual meeting the qualification requirements specified in Part 5 and PART 9 -Appendix C of these rules who is responsible for the overall operation and results reported by the laboratory.

“Limit of Detection (LOD)” – the lowest concentration or amount of an analyte that can be reliably shown to be present or measured under defined conditions and is derived by adding three standard deviations to the true value of the blank.

“Limit of Quantitation (LOQ)” – the concentration at which quantitative results can be reported with a high degree of confidence and is derived by adding ten standard deviations to the true value of the blank or administratively defined in terms of the lowest concentration of the lowest calibrator used in the analytic run.

~~“DISCOVERY Litigation Packet”~~ – refers to records requested for litigation purposes that include sufficient material to allow independent review by a qualified toxicologist. ~~The records must include when applicable, but are not limited to; the request of analysis, chain of custody documents, test subject analytical data, calibration, standard, quality control data from the subject analytic run, limits of quantitation (LOQ), limits of detection (LOD), analyst curriculum vitae (CV), and the standard operating procedure used during the analysis.~~

“Proficiency-Testing (PT)” – The evaluation of unknown specimens ~~supplied by a provider~~ which determines target ALCOHOL OR DRUG values for those unknown specimens THAT IS MANUFACTURED BY A PROVIDER ACCREDITED TO THE INTERNATIONAL STANDARDS ORGANIZATION (ISO/IEC 17043). A SINGLE EVALUATION IS COMMONLY REFERRED TO AS A PT EVENT.

“Representative of a Certified Laboratory” – any employee of a certified laboratory or a courier employed by or contracted by the certified laboratory to transport specimens for the certified laboratory.

~~“Supervisory Analyst”—the individual(s) that meet the qualification requirements specified in Part 5 and Appendix C of these rules and who is responsible for the day to day operation and reporting of results by the laboratory as delegated in writing by the laboratory director.~~

“SATISFACTORY PT PERFORMANCE” – RESULTS SCORED FROM AN INDIVIDUAL PT EVENT THAT MEET OR EXCEED THE MINIMUM SCORE ALLOWABLE TO BE CONSIDERED PASSING.

“SUCCESSFUL PT PERFORMANCE” – ONGOING SATISFACTORY PT PERFORMANCE IN MULTIPLE PT EVENTS THAT MEET OR EXCEED THE MINIMUM SCORE ALLOWABLE TO BE CONSIDERED PASSING.

“Tampering” – to meddle with the certified EBAT instrument especially for the purpose of altering test results, damaging or misusing the instrument either by intentional or unintentional means.

“TECHNICAL PERSONNEL” - INDIVIDUALS WHO ARE ENGAGED IN ANY ASPECT OF THE TESTING OF SAMPLES AND REPORTING OF RESULTS UNDER THE SUPERVISION OF THE LABORATORY DIRECTOR OR THE LABORATORY DIRECTOR'S DESIGNEE.

“UNSATISFACTORY PT PERFORMANCE” – RESULTS SCORED FROM AN INDIVIDUAL PT EVENT THAT ARE SCORED BELOW THE MINIMUM ALLOWABLE TO BE CONSIDERED PASSING.

“UNSUCCESSFUL PT PERFORMANCE” – TWO CONSECUTIVE UNSATISFACTORY INDIVIDUAL PT EVENTS OR 2 OUT OF 3 UNSATISFACTORY INDIVIDUAL PT EVENTS THAT ARE SCORED BELOW THE MINIMUM ALLOWABLE TO BE CONSIDERED PASSING.

Part 2. Certification Requirements for Operators and Instructors Performing Evidential Breath Alcohol Testing (EBAT)

2.1 Operators seeking initial EBAT certification or EBAT recertification by the department must meet the following criteria:

\*\*\*\*\*

2.1.3 The certified EBAT operator card issued by the Department may serve as evidence of certification.

\*\*\*\*\*

Part 3 ~~Certification~~ Requirements for Evidential Breath Alcohol Testing (EBAT) Facilities

3.1 Standards for ~~APPROVAL certification~~ of permanent, temporary and mobile Evidential Breath Alcohol Testing (EBAT) facilities.

3.1.1 Evidential Breath Alcohol Test(s) must be conducted only in facilities that have been ~~APPROVED~~certified by the Department.

3.1.2 Department standards for ~~APPROVAL certification~~ of EBAT facilities are specified in Part 3 ~~and Appendix A~~ of this rule.

3.1.3 EBAT facilities meeting the standards of performance as specified in Part 3 ~~and Appendix A~~ of this rule may ~~BE APPROVED~~receive certification.

3.1.4 Onsite Inspections of permanent, temporary and mobile EBAT facilities must be performed prior to initial ~~APPROVAL certification~~ and once per calendar year thereafter by Department personnel.

3.1.4.1 Facility inspection reports will be sent by the Department to the facility within 15 days of the inspection date.

3.1.4.2 When deficiencies are cited in a facility inspection report, a plan of correction must be received by the Department for review and approval within 15 days of receipt of the facility inspection report by the agency.

3.1.5 Initial ~~APPROVAL CERTIFICATION~~ – permanent, temporary, and mobile EBAT facilities.

3.1.5.1 A facility representative must submit a written request to the Department for initial APPROVAL of an EBAT facility. THE REQUEST WILL BE IN THE FORM AND MANNER REQUIRED BY THE DEPARTMENT ~~certification that~~ AND must include:

3.1.5.1.1        Acknowledgement from the facility representative that the requirements found in Part 3 ~~and Appendix A~~ have been reviewed prior to requesting APPROVAL ~~certification~~.

3.1.5.1.2        Documentation from a certified electrician verifying the power to the certified EBAT instrument is on its own dedicated power circuit.

3.1.5.1.3        Verification from the facility representative that a dedicated and active data, and ~~when available, analog~~ phone line are installed and available for communications by the certified EBAT instrument.

       3.1.5.2 Upon receipt of the initial facility APPROVAL ~~certification~~ request, Department personnel will schedule an onsite inspection to verify compliance with the requirements found in Part 3 ~~and Appendix A~~ prior to APPROVAL ~~certification~~.

3.1. ~~6.5-3~~ The Department will perform and onsite inspection at an ~~certified~~ EBAT facility when any of the following occur:

3.1. ~~6.15-3.4~~ The EBAT facility is seeking initial APPROVAL ~~certification~~, or

3.1. ~~6.25-3.2~~ The APPROVED ~~certified~~ EBAT facility requests relocation of the certified EBAT instrument either temporarily or permanently within the FACILITY agency, or

3.1. ~~6.35-3.3~~ A new EBAT facility is being constructed that will house the certified EBAT instrument, or

3.1. ~~6.45-3.4~~ A complaint is received by the Department that requires an onsite inspection to verify compliance. ~~3.1.6 The certified EBAT instrument must not be moved from the location it is certified for without prior authorization from the Department.~~

## 3.2 EVIDENTIAL BREATH ALCOHOL TESTING (EBAT) FACILITY REQUIREMENTS

### 3.2.1 INSTRUMENT POWER REQUIREMENTS

3.2.1.1 ALTERNATING CURRENT (AC) LINE VOLTAGE OF 120 VOLTS, 60 HERTZ (HZ) GROUNDED OUTLET ON A DEDICATED CIRCUIT.

3.2.1.2 20 AMPERE MAXIMUM CIRCUIT BREAKER.

3.2.1.3 VOLTAGE 120 +/- 12V (108V – 132V).

3.2.1.4 GROUNDED OUTLET.

3.2.1.5 AN ADEQUATE SURGE PROTECTION DEVICE MUST BE PLACED BETWEEN THE EBAT INSTRUMENTATION AND THE GROUNDED OUTLET.

### 3.2.2 FACILITY ENVIRONMENTAL REQUIREMENTS

3.2.2.1 THE TEMPERATURE OF THE ROOM WHERE THE EBAT INSTRUMENTATION IS OPERATED MUST BE MAINTAINED BETWEEN 15.0 – 32.2 DEGREES CENTIGRADE

3.2.2.2 THE RELATIVE HUMIDITY OF THE ROOM WHERE THE EBAT INSTRUMENTATION IS OPERATED MUST BE MAINTAINED BETWEEN 5% - 70%.

3.2.2.3 THE EBAT INSTRUMENTATION ROOM MUST HAVE ADEQUATE LIGHTING.

3.2.2.4 THE AREA AROUND AND UNDER THE EBAT INSTRUMENTATION MUST BE FREE OF DUST, DIRT AND KEPT ORDERLY.

3.2.2.5 THE EBAT INSTRUMENTATION MUST BE PLACED ON A SOLID AND ADEQUATE WORK SURFACE.

3.2.2.6 THE ROOM WHERE THE EBAT INSTRUMENTATION IS LOCATED MUST RECEIVE ADEQUATE VENTILATION.

3.2.2.7 THE VENTILATION TO THE ROOM WHERE THE EBAT INSTRUMENTATION IS LOCATED MUST PREVENT AUTOMOBILE EMISSIONS FROM BEING INTRODUCED.

3.2.2.8 THE ROOM WHERE THE EBAT INSTRUMENTATION IS LOCATED MUST NOT BE USED TO STORE CLEANING COMPOUNDS OR VOLATILE CHEMICALS.

3.2.2.9 THE ROOM WHERE THE EBAT INSTRUMENTATION IS LOCATED MUST REMAIN SECURE AND NOT READILY ACCESSIBLE TO UNAUTHORIZED PERSONNEL.

### 3.2.3 EBAT FACILITY DOCUMENTS

3.2.3.1 THE EBAT INSTRUMENT CALIBRATION CERTIFICATE MUST BE POSTED NEXT TO THE INSTRUMENT.

3.2.3.2 THE EBAT INSTRUMENT EXCEPTION MESSAGE GUIDE MUST BE POSTED NEXT TO THE INSTRUMENT.

3.2.3.3 CORRECTIVE ACTIONS TAKEN BY THE CERTIFIED EBAT INSTRUCTOR OR OPERATOR ARE APPROPRIATE AND TIMELY WHEN EXCEPTION MESSAGES ARE ENCOUNTERED.

3.2.3.43 THE EBAT INSTRUMENTATION RECORDS APPLICABLE TO THE AGENCY MUST BE RETAINED BY THE APPROVED FACILITY FOR A MINIMUM OF 5 YEARS.

### 3.2.4 EBAT INSTRUMENTATION

3.2.4.1 THE APPROVED FACILITY MUST HAVE AVAILABLE AN ADEQUATE SUPPLY OF MOUTH PIECES.



3.2.4.2 THE APPROVED FACILITY MUST HAVE AVAILABLE AN ADEQUATE SUPPLY OF STANDARD SIMULATOR SOLUTION ISSUED BY THE DEPARTMENT.

3.2.4.3 THE STANDARD SIMULATOR SOLUTION IS CHANGED AS NEEDED AND CORRECTLY BY A CERTIFIED EBAT INSTRUCTOR.

3.2.4.4 EBAT INSTRUMENTATION AND SUPPLIES MUST BE PROPERLY MAINTAINED, STORED AND AVAILABLE TO AUTHORIZED PERSONNEL.

3.2.4.5 THE EBAT INSTRUMENTATION IS BEING OPERATED IN THE LOCATION IT WAS APPROVED FOR WITHIN THE APPROVED FACILITY.

#### Part 4 Evidential Breath Alcohol Testing (EBAT) - Collection and Testing Procedures

4.1 This part establishes the minimum standards for collection and testing of evidential breath alcohol samples that include:

4.1.1 A certified EBAT instructor or operator to perform the test that is in an active status meeting the requirements found in Part 2, and

4.1.2 ~~AN APPROVED-certified~~ EBAT facility where the test is to be conducted meeting the requirement found in Part 3, and

4.1.3 A certified EBAT instrument used to perform the test.

4.1.3.1 Evidential breath specimens must be analyzed using a certified EBAT instrument approved for use by the Department. Certification of the EBAT instrument will be based on scientific standards of performance established by the Department.

4.1.3.2 The Department must certify each EBAT instrument initially and annually thereafter.

4.1.3.3 The Department will issue a certificate for each certified EBAT instrument after initial certification and after each annual certification. The certificate will reflect the certified EBAT instrument serial number and the inclusive dates for the certification period.

4.1.3.4 Every EBAT sequence must include an assayed reference standard(s) with a known ethanol concentration of 0.100 grams of alcohol/210 liters of breath that brackets the subject's breath samples. The assayed reference standard(s) target value(s) is 0.100 grams of alcohol/210 liters of breath and must fall within a range of (0.090 – 0.110 grams of alcohol/210 liters of breath).

4.1.3.4.1 The results of the assayed reference standard(s) must agree with each other within  $\pm 10\%$  during the calibration checks.

4.1.3.4.2 If the correlation between calibration checks is not within  $\pm 10\%$ , the instrument will discontinue the test sequence and print a "No Calibration Correlation" ~~E~~exception MESSAGE.~~report~~.

4.1.3.5 For each EBAT, the results of the two subject samples must agree with each other within 0.020 grams of alcohol/210 liters of breath.

4.1.3.5.1 If the 0.020 grams of alcohol/210 liters of breath correlation is not obtained with the subject samples, the instrument will discontinue the



- 276 test sequence and print a "No .02 Agreement" Eexception  
277 MESSAGE report.
- 278 4.1.3.5.2 When a "No .02 Agreement" Eexception MESSAGE report is  
279 obtained, the certified EBAT instructor or operator must repeat the  
280 20-minute deprivation period prior to retesting the subject.
- 281 4.1.3.6 The two subject breath samples must meet the minimum measurement  
282 requirements in order to obtain a result. Samples not meeting the minimum  
283 sample requirements may result in an "Invalid Sample" Eexception MESSAGE  
284 report.
- 285 4.1.3.6.1 If an "Invalid Sample" Eexception MESSAGE report is obtained,  
286 the certified EBAT instructor or operator must repeat the 20-  
287 minute deprivation period prior to retesting the subject.
- 288 4.2 Pre-Analytic EBAT requirements include:
- 289 4.2.1 Unless otherwise provided by law, at the request of the subject, the subject must be  
290 given a choice of which type of evidential chemical test (evidential breath or blood  
291 alcohol) they prefer to take to determine the alcohol concentration in their body, or the  
292 choice to refuse either evidential chemical test. Nothing in this rule is intended to exempt  
293 or exonerate an individual from the penalties proscribed in ~~sections~~ Sections 42-4-1301.1  
294 and 42-4-1301.2, C.R.S., or any other relevant law, for the failure to submit to such test.
- 295 4.2.2 Ensure the certified EBAT instrument is in the "Ready" mode. If the certified EBAT  
296 instrument is in "Standby" mode, depress the start test button to initiate the warm-up  
297 period.
- 298 4.2.3 Completion of a 20-minute deprivation period MUST BE conducted at the certified EBAT  
299 facility by a certified EBAT instructor or operator that is in an active status that must  
300 include;
- 301 \*\*\*\*\*
- 302 4.4 Post-Analytic EBAT requirements include:
- 303 4.4.1 The certified EBAT instructor or operator must sign the completed EBAT report  
304 attestation statement indicating the test was performed in compliance with the  
305 procedures set forth by the Department and as prescribed by this rule.
- 306 4.4.2 The certified EBAT instructor or operator must review the final report(s) for completeness.
- 307 4.4.3 The certified EBAT instructor or operator must include all printouts generated by the  
308 certified EBAT instrument to include any associated Eexception MESSAGE(s) reports (if  
309 applicable) that may have been encountered during the subject test attempt(s).
- 310 4.4.3 All printouts generated from the certified EBAT instrument for the subject must be  
311 included in the DUI packet as defined in Part 1.5.
- 312 4.4.4 All certified EBAT instrumentation records must be retained for a minimum of 5-years by  
313 either the certified EBAT facility or the Department as applicable.
- 314 Part 5. Certification Requirements for Forensic Toxicology Laboratories

315 5.1 Laboratory Analysis of Blood, Urine and Post Mortem Specimens

316 5.1.1 Laboratories must be certified by the Department to provide analysis. Participation in the  
317 Forensic Toxicology Laboratory certification program is based upon either: successful on-  
318 site annual inspection for non-accredited labs, or, ongoing accreditation status for  
319 accredited labs, ~~and, IN ADDITION TO~~ successful PROFICIENCY TESTING  
320 PERFORMANCE IN THE CATEGORY OR CATEGORIES THE LABORATORY IS  
321 CERTIFIED IN ~~participation in the designated proficiency testing~~ and ongoing  
322 compliance with PARTS 5, THROUGH 9 OF THIS RULE ~~the applicable requirements in~~  
323 ~~this rule.~~

324 5.1.2 Laboratories seeking certification that are accredited by A NATIONALLY OR  
325 INTERNATIONALLY RECOGNIZED ACCREDITATION ORGANIZATION THAT  
326 INCLUDES THE SCOPE OF FORENSIC TOXICOLOGY ~~the American Board of Forensic~~  
327 ~~Toxicology (ABFT), the International Standards Organization (ISO), or a successor to the~~  
328 ~~either organization~~ may elect to forgo the annual onsite inspection as long as  
329 accreditation remains active, and, the biennial inspection performed by the accrediting  
330 organization includes review of the specialty of toxicology.

331

332 5.1.3 Accredited laboratories requesting certification from the Department must provide the  
333 Department a copy of the accrediting organization's MOST RECENT AND final biennial  
334 inspection report within 30 days of receipt OF ACCREDITATION IN THE SCOPE OF  
335 FORENSIC TOXICOLOGY ~~for the specialty of toxicology~~ in addition to, any accepted  
336 plan of correction submitted to the accrediting organization by the laboratory.

337 5.1.4 The Department will perform an onsite inspection of an accredited laboratory in the event  
338 that the specialty of toxicology is not reviewed by the accrediting organization during the  
339 biennial inspection.

340 5.1.5 Laboratories certified by the Department who send samples to a reference laboratory for  
341 testing, must send those samples to A FORENSIC TOXICOLOGY LABORATORY  
342 CERTIFIED BY THE DEPARTMENT.  
343 ~~either another Department certified lab, or a forensic toxicology laboratory accredited by the~~  
344 ~~American Board of Forensic Toxicology (ABFT), the International Standards Organization~~  
345 ~~(ISO), or a successor to the either organization.~~

346 5.1.6 Laboratories may be certified to perform tests for one or more of the following categories:  
347 blood alcohol, blood drug, urine drug, and post-mortem ~~testing.~~

348 5.1.7 Laboratories must meet standards of performance as established by these regulations.  
349 Standards of performance include; personnel qualifications, standard operating  
350 procedure manual, analytical process, proficiency testing, QUALITY ASSURANCE,  
351 quality control, laboratory security, chain of custody, specimen retention, space, records,  
352 and result reporting.

353 5.1.8 Laboratory inspections must be performed prior to initial certification and annually  
354 thereafter by Department personnel as established by this rule. A laboratory meeting the  
355 certification requirements of these regulations will be issued a certificate. Recertification  
356 shall be required annually and will be effective each July 1.

357 5.2 Initial Application

5.2.1 Laboratory Directors REQUESTING CERTIFICATION OF THEIR LABORATORY must submit to the Department a completed application ~~(Appendix B) for certification of their laboratory.~~ THE APPLICATION WILL BE IN THE FORM AND MANNER REQUIRED BY THE DEPARTMENT AND INCLUDE: LABORATORY NAME, LABORATORY DIRECTOR, FACILITY ADDRESS, LABORATORY CORRESPONDENCE INFORMATION, AND ANALYTICAL CATEGORIES FOR WHICH THE LABORATORY REQUESTS CERTIFICATION.

5.2.2 The Department will acknowledge the request and provide a copy of this rule to the laboratory.

5.2.3 To be certified, laboratories must demonstrate compliance with all applicable requirements in Parts 5, THROUGH 6, 7, 8, 9 and Appendix C and participate in an initial on-site inspection. THE ONSITE INSPECTION IS WAIVED FOR ACCREDITED LABORATORIES SO LONG AS THE REQUIREMENTS AT 5.1.3 ARE SATISFIED AS DETERMINED BY THE DEPARTMENT AT ITS SOLE DISCRETION.

### 5.3 Application for Continued Certification

5.3.1 Annually the Laboratory Director must REQUEST TO BE CONSIDERED FOR CONTINUED CERTIFICATION BY providing a completed application ~~(Appendix B) TO THE DEPARTMENT,~~ no later than June 1. THE APPLICATION WILL BE IN THE FORM AND MANNER REQUIRED BY THE DEPARTMENT AND WILL INCLUDE: LABORATORY NAME, LABORATORY DIRECTOR, FACILITY ADDRESS, LABORATORY CORRESPONDENCE INFORMATION, ANALYTICAL CATEGORIES FOR WHICH THE LABORATORY REQUESTS CERTIFICATION AND CASE LOAD TOTALS.

5.3.2 Laboratories must be recertified annually starting July 1, and certification will be for a period of 1 year.

5.3.3 ~~Certified laboratories referring specimens to another accredited laboratory must include documentation with the application (Appendix B) that the reference laboratory is accredited by the American Board of Forensic Toxicology (ABFT), the International Standards Organization (ISO), or a successor to the either organization.~~

5.3.34 Laboratories must maintain a listing of all analytical methods used by the laboratory and all analytes tested and reported by the laboratory. The laboratory must provide this listing to the Department upon request.

5.3.45 To maintain certification, laboratories shall meet all applicable requirements found in Parts 5, THROUGH 9-8, and Appendix C. Non-accredited laboratories or accredited laboratories identified in 5.1.4 must participate in an annual on-site inspection.

### 5.4 General Requirements

5.4.1 In addition to the laboratory's application, the laboratory must provide AN UPDATED LISTING OF ALL TECHNICAL PERSONNEL ENGAGED IN TESTING TO THE DEPARTMENT. THE LISTING WILL BE IN THE FORM AND MANNER REQUIRED BY THE DEPARTMENT. ~~the following information to the Department: written evidence concerning the education, scientific training, and experience of the laboratory director and all personnel performing the testing.~~

5.4.2 Prior to independently analyzing samples, TECHNICAL testing personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable

ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls). The laboratory must have a system to evaluate and document THE COMPETENCY OF TECHNICAL PERSONNEL ~~employee competency~~ as specified in PART 9. Appendix C.

5.4.3 The laboratory must notify the Department in writing within thirty days of any changes pertaining to laboratory location and/or KEY MANAGEMENT. ~~personnel~~.

5.4.4 The Laboratory Director is directly responsible for the accuracy of the tests performed, the accuracy of the reports issued, and adherence to the applicable requirements in this rule.

5.4.5 The laboratory must have adequate space, equipment, materials, and UTILIZE REFERENCE MATERIALS FROM A MANUFACTURER ACCREDITED TO THE INTERNATIONAL STANDARDS ORGANIZATION (ISO) REQUIREMENTS FOR CERTIFIED REFERENCE MATERIALS AND CERTIFIED REFERENCE STANDARDS, WHEN AVAILABLE. ~~controls available to perform the tests reported.~~

~~5.4.5.1 Samples which serve as test controls must be of such quality as could be determined "Certifiable" by National Institute of Standards and Technology ("NIST") standards, although such samples need not actually be NIST-Certified. Relevant documentation must be available for inspection.~~

5.4.6 The laboratory must establish and adhere to written methods of analysis (Standard Operating Procedure (SOP)) used to perform the tests reported. Critical elements that must be addressed in the SOP are in PART 9. Appendix C, Section B (a-u).

5.4.7 The laboratory must demonstrate compliance with these regulations through a successful on-site inspection conducted by Department personnel prior to certification. Certified laboratories will be inspected on an annual announced basis. Certified laboratories may be inspected on an unannounced basis to evaluate complaints.

~~Effective April 1, 2009, t~~ 5.4.8 The laboratory must maintain all records related to analysis for a minimum of 5 years. Records to be maintained include instrument maintenance, calibration, quality control and quality assurance documentation for all analyses performed, specimen processing, results and reports of analysis, dates of analysis and the identity of the person performing the analysis. Retained records must be made available for review by Department personnel.

5.4.9 The laboratory must INVESTIGATE ALL ANALYTICAL NON-CONFORMANCES. SUBJECT TESTING IN THE AFFECTED METHOD MAY NOT RESUME UNTIL THE LABORATORY HAS PERFORMED A ROOT CAUSE ANALYSIS AND CORRECTED THE NON-CONFORMANCE. ALL SUBJECT TESTS IMPACTED BY THE NON-CONFORMANCE MUST BE REVIEWED BY THE LABORATORY DIRECTOR AND AMENDED REPORTS ISSUED WHEN NECESSARY. COPIES OF THE NON-CONFORMANCE, ROOT CAUSE ANALYSIS AND CORRECTIVE ACTION PLAN MUST BE PROVIDED TO THE DEPARTMENT UPON REQUEST. ~~provide an acceptable plan of correction to the department within 15 days of identification of an analytical Non-Conformance. Subject testing in the affected method may not resume until the laboratory's plan of correction is accepted by the Department and the source of the Non-Conformance has been identified and resolved. All subject tests impacted by the Non-Conformance must be reviewed by the Laboratory Director and amended reports issued if necessary.~~

5.5 Proficiency Testing (PT) requirements for CERTIFIED FORENSIC TOXICOLOGY LABORATORIES. Blood, Urine and Post Mortem Samples

5.5.1 Proficiency Testing (PT) is the evaluation of unknown specimens WHICH DETERMINES TARGET VALUES FOR THOSE UNKNOWN SPECIMENS AND IS REQUIRED FOR EACH APPROVED CATEGORY THE LABORATORY IS CERTIFIED IN. ~~supplied by a provider that determines target values for those unknown specimens. PT is required for each approved category.~~

5.5.2 PT MATERIAL MUST BE OBTAINED FROM A PT PROVIDER THAT IS ACCREDITED TO THE ISO/IEC 17043 STANDARDS AND CAN PROVIDE APPROPRIATE BIOLOGICAL SPECIMENS THAT ARE APPLICABLE TO THE TESTING THE LABORATORY PERFORMS.

5.5.~~32~~ Prior to initial certification, the laboratory must have successfully participated in AT MINIMUM one-of-the-designated proficiency testing event(s) WITHIN THE PRECEDING 12 MONTHS in the category for which the laboratory seeks certification AND RECEIVED A SATISFACTORY SCORE(S) FOR EACH OF THOSE EVENT(S) AS DEFINED IN THE PART 5, ~~within the preceding 12 months.~~

5.5.~~43~~ To maintain continued laboratory certification, a laboratory must DEMONSTRATE SUCCESSFUL PT PERFORMANCE FOR EACH CATEGORY THE LABORATORY IS CERTIFIED.

~~participate in the designated PT program and maintain satisfactory performance as determined by the Department.~~

5.5.~~54~~ FOR EACH APPROVED CATEGORY OF TESTING, PT SAMPLES SHALL BE:

5.5.5.1 TESTED FOR ALL ANALYTES REPORTED BY THE LABORATORY THAT ARE PRESENT IN THE PT SAMPLES, AND

5.5.5.2 TESTED BY EACH TECHNICAL PERSONNEL ANNUALLY, AND

5.5.5.3 TESTED USING APPROVED STANDARD OPERATING PROCEDURES, AND

5.5.5.4 TESTED IN THE SAME MANNER AS SUBJECT SAMPLES, AND

5.5.5.5 REPORTED TO THE PT PROVIDER, AND ~~PT samples shall be tested by the same procedure used for all samples, including, but not limited to, the same number of replicate analyses, the same standards, same testing personnel and equipment, and all other pertinent factors.~~

5.5.~~5.64-1~~ The laboratory must request that the proficiency testing provider PROVIDE mail a consultant copy of their PT survey results to:

**Colorado Department of Public Health and Environment  
Laboratory Services Division  
Certification Program  
8100 Lowry Boulevard  
Denver, CO 80230-6828**

5.5.~~65~~ Blood Alcohol Testing

5.5.5.1 ~~The Department will make arrangements to provide blood alcohol PT samples to the laboratories through a PT provider.~~

5.5.65.12 A laboratory must participate in A MINIMUM OF 3 ALCOHOL PT TESTING PT testing through 3 events per year. EACH EVENT MUST CONSIST OF A MINIMUM, consisting of 45 specimens each. ~~The laboratory MUST submit results to the PT provider.~~ The PT provider will evaluate the results and forward them to the laboratory as well as to the Department.

5.5.65.23 Other forensically significant volatiles, such as acetone, methanol and isopropanol, may be included in one or more PT samples ~~ININ~~ each of the 3 events. The laboratory must be able to detect any volatile included in the PT samples and must retain documentation of this detection with the PT results.

5.5.65.34 SCORING Grading Criteria for Blood Alcohol Proficiency Testing

5.5.65.34.1 ~~PT proficiency test~~ results must be returned to the PT provider within the time specified by the PT provider. Results received after the due date will not be SCORED graded and will be considered an unsatisfactory performance resulting in a score of 0 for the testing event. The laboratory must contact the PT provider AND THE DEPARTMENT if extenuating circumstances prevent timely response to a PT event.

5.5.6.3.2 AN ACCEPTABLE BLOOD ALCOHOL PT RESULT IS ONE THAT FALLS WITHIN +/-10% OF THE REPORTED MEAN.

5.5.65.34.32 The laboratory must investigate any score less than 100% and undertake corrective action as needed. The investigation outcome and corrective action must be PROVIDED TO THE DEPARTMENT UPON REQUEST. ~~submitted to the Department for approval within 15 days of receipt of the results.~~

5.5.5.34.43 The PT ~~provider will score each event as "Satisfactory" or "Unsatisfactory" and the~~ results will be reviewed by the Department to determine if successful PT performance has been achieved. If a laboratory has consecutive "Unsatisfactory" evaluations, or achieves an "Unsatisfactory" score in 2 of any 3 consecutive PT events, the PT performance is deemed "Unsuccessful". The "Unsuccessful" determination may result in a "Directed Plan ~~Of Of~~ Correction" specified by the Department, or suspension/limitation of certification for the failed analyte.

5.5.76 Urine, Blood and Post~~m~~-Mortem Drug Testing

5.5.76.1 For blood drug, urine drug and post-mortem screening and confirmation certification, ~~THE a~~ laboratory must DEMONSTRATE SUCCESSFUL PT PERFORMANCE. ~~successfully participate in the appropriate College of American Pathologists (CAP) proficiency test programs.~~

5.5.76.1.1 For blood ~~drug~~ certification the LABORATORY MUST PARTICIPATE IN A MINIMUM OF TWO PT EVENTS ANNUALLY THAT INCLUDE BLOOD SAMPLES. ~~required program is the Forensic Toxicology (Criminalistics) (FTC) survey.~~



5.5.76.1.2 For urine -drug certification the LABORATORY MUST PARTICIPATE IN A MINIMUM OF TWO PT EVENTS ANNUALLY THAT INCLUDE URINE SAMPLES. ~~required program is the Urine Toxicology (UT) survey.~~

5.5.76.1.3 For laboratories performing only post-mortem forensic toxicology testing the LABORATORY MUST PARTICIPATE IN A MINIMUM OF TWO PT EVENTS ANNUALLY THAT INCLUDE A COMBINATION OF BLOOD AND URINE SAMPLES AND OTHER POSTMORTEM MATRICIES WHEN AVAILABLE. ~~required programs are the Toxicology (T) and the Urine Toxicology (UT) surveys.~~

~~5.5.6.1.4 Laboratories certified for both blood and urine drug testing are eligible to apply for post mortem certification without participating in the Toxicology (T) survey.~~

5.5.76.2 SCORING Grading criteria for drug proficiency testing

5.5.76.2.1 ~~PT proficiency test~~ results must be returned to the ~~PT~~ provider within the time specified by the ~~PT~~ provider. Results received after the due date will not be SCORED graded and will be considered an "Unsatisfactory" performance resulting in a score of 0 for the testing event. ~~T~~he laboratory must contact the PT provider AND THE DEPARTMENT if extenuating circumstances prevent timely response to a PT event.

5.5.76.2.2 All analytes listed and reported (qualitatively and quantitatively) by the laboratory must be ANALYTICALLY tested in the PT challenges ~~when provided~~ in the same manner as subject samples.

5.5.76.2.3 A satisfactory event score is the positive identification and when applicable, quantitation of 80% of the target analytes present with no false positives. Any false positive will result in an "Unsatisfactory" score for the PT event.

5.5.76.2.3.1 SCORING IS AS FOLLOWS. IF A LABORATORY ONLY REPORTS AN ANALYTE QUALITATIVELY, THE TOTAL POSSIBLE POINTS FOR THAT ANALYTE WILL BE 4 POINTS.

—TOTAL POINTS POSSIBLE:

A. EACH POSSIBLE POSITIVE IDENTIFICATION IS 4 POINTS.

B. EACH QUANTITATIVE RESULT IS WORTH A POSSIBLE 2 POINTS.

NOTE: QUANTITATIVE RESULTS WILL BE SUBJECT TO FURTHER POINT RESTRICTIONS WHEN STANDARD DEVIATION (SD) VALUES ARE GIVEN BY THE PT PROVIDER.

—LABORATORY'S POINTS:

A. EACH CORRECTLY IDENTIFIED ANALYTE IS 4 POINTS.

- B. EACH FALSE NEGATIVE IS 0 POINTS (I.E., NO QUALITATIVE RESULT GIVEN).
- C. EACH QUANTITATIVE RESULT WITHIN 1 STANDARD DEVIATION (SD) IS 2 POINTS.
- D. EACH QUANTITATIVE RESULT WITHIN 2 SD IS 1 POINT.
- E. EACH QUANTITATIVE RESULT OUTSIDE 2 SD IS 0 POINTS.
- F. EACH CORRECTLY IDENTIFIED NEGATIVE SPECIMEN IS 4 POINTS.
- G. EACH FALSE POSITIVE IS MINUS (-) 25 POINTS AND IS AUTOMATICALLY CONSIDERED AN UNSATISFACTORY EVENT.

—LABORATORY'S SCORE = (LABORATORY'S POINTS / TOTAL POSSIBLE POINTS) \* 100

- 5.5.76.2.4 Whenever a laboratory RECEIVES ~~has~~ an unsatisfactory PT~~pt~~ event (less than 80%), the laboratory must investigate and undertake corrective action as needed. The investigation outcome and corrective action documentation must be PROVIDED TO THE DEPARTMENT UPON REQUEST. ~~submitted to the Department for approval within 15 calendar days of receipt of the results.~~
- 5.5.76.2.5 Whenever a quantitative result reported by the laboratory in a PT challenge is considered "Unacceptable" by the PT provider (OUTSIDE ±2sd-2SD or 30% from the mean, whichever is greater), the laboratory must undertake and document corrective action. The ~~the~~ corrective action documentation must be retained with the PT results.
- 5.5.76.2.6 A laboratory will be suspended from a category for "Unsuccessful" PT performance if consecutive "Unsatisfactory" PT events occur, or two out of three consecutive "Unsatisfactory" PT events occur. Aa ~~A~~ laboratory may be reinstated to active status after successful participation in the next PT challenge. Failure to achieve a "Satisfactory" score in the next test event will result in the revocation of the certificate and require two successful PT events before the laboratory may be eligible to reapply for certification. The laboratory may request the PT provider send, at the expense of the laboratory, ~~one extra set of the designated~~ PT samples when suspension status occurs.

## 5.6 OnS-Site Laboratory Inspection

- 5.6.1 On-site laboratory inspections must be performed prior to initial certification and annually thereafter FOR NON-ACCREDITED LABS by the Department IN ACCORDANCE WITH THIS RULE.
- 5.6.2 The on-site inspection will include a review of the laboratory's practices to ensure compliance with these regulations. ~~The regulatory requirements are in checklist format found in~~ LABORATORIES MUST DEMONSTRATE COMPLIANCE WITH ALL APPLICABLE REQUIREMENTS IN PARTS 5 THROUGH 9, 6, 7, 8 AND Appendix C.



- 5.6.3 Laboratories will be contacted by the Department to SCHEDULE THE ANNUAL ONSITE INSPECTION AFTER RECEIPT OF THE APPLICATION REQUESTING CERTIFICATION. ~~arrange routine inspection dates approximately three weeks prior to a proposed date.~~ A letter confirming the inspection date will be sent to the laboratory.
- 5.6.4 The DEPARTMENT WILL EVALUATE COMPLIANCE WITH THE LABORATORY CERTIFICATION STANDARDS LISTED IN PART 9 DURING THE ONSITE INSPECTION. ~~inspection checklist (Appendix C) will be used onsite to evaluate and assess the laboratory's compliance with the certification requirements. Each item listed on the checklist will be answered by the Department inspector as Yes ("Y"), No ("N") or Not Applicable ("NA"). Each item answered as "N" will be included in a report to describe the noncompliant practice, the source of information, the scope and extent of the noncompliant practice.~~
- 5.6.5 Following the on-site inspection, a written report will be prepared THAT WILL LIST ANY NON-CONFORMANCES IDENTIFIED. ~~AND PROVIDED TO THE LABORATORY WITHIN 30-DAYS.~~
- ~~and reviewed by a peer inspector or supervisor prior to mailing.~~ The report should be sent to the laboratory within ~~45-30~~ days of inspection.
- 5.6.6 ~~When noncompliant practices are identified in an inspection report,~~ WITHIN 30-DAYS OF RECEIPT OF THE REPORT, the laboratory must provide THE DEPARTMENT a written PLAN OF CORRECTION THAT ADDRESSES EACH NON-CONFORMANCE LISTED ON THE INSPECTION REPORT FOR REVIEW AND APPROVAL.
- ~~\_\_\_\_\_ response to the report within 15 days of receipt. The laboratory's written plan of correction must address each noncompliant item cited as result of items marked "N" on the inspection checklist. A response will not be required from the laboratory if all items on an inspection checklist are marked either "Y" or "NA".~~
- 5.6.7 ~~The written plan of correction will be reviewed by the Department, and if acceptable, will be approved.~~ ANY REQUESTED OBJECTIVE EVIDENCE MUST BE PROVIDED TO THE DEPARTMENT WITHIN 60-DAYS OF RECEIPT OF THE INSPECTION REPORT. Any items requiring clarification will be resolved by phone or written correspondence.
- 5.6.8 ~~Documents must be provided to the Department by the laboratory within 90 days of the inspection for verification and proof of implementation of the changes described in the written plan of correction. A subsequent on-site inspection will be conducted if the verification documents are not received, if compliance with corrective actions is difficult to verify by documentation, or if practices subject to correction have significant potential for direct impact on the quality of laboratory results as determined by the Department.~~
- 5.6.89 Identification of NON-CONFORMANCE PRACTICES THAT IMPACT TEST RESULTS OR, FAILURE TO PROVIDE AN ACCEPTABLE PLAN OF CORRECTION OR, FAILURE TO PROVIDE ADEQUATE OBJECTIVE EVIDENCE WITHIN THE SPECIFIED TIMELINES, MAY RESULT IN LIMITATION, SUSPENSION, REVOCATION OR DENIAL OF CERTIFICATION. ~~noncompliant practices directly resulting in inaccurate laboratory reports, failure to provide a plan of correction or failure to adequately correct any noncompliant practice may result in the inspector's recommendation to deny initial certification or limit, deny, suspend or revoke the laboratory certificate.~~ Such action shall be governed by ~~section~~ Section 24-4-104, C.R.S.
- 5.6.940 UPON THE LABORATORY'S SUCCESSFUL COMPLETION OF THE ANNUAL INSPECTION AND CERTIFICATION PROCESS, THE DEPARTMENT WILL ISSUE A

CERTIFICATE. THE CERTIFICATE WILL INCLUDE THE NAME AND LOCATION OF THE LABORATORY, THE CATEGORIES THE LABORATORY IS CERTIFIED TO PERFORM TESTING IN AND THE CERTIFICATION PERIOD.

~~A certificate will be issued by the Department to the laboratory to show certification has been approved. The certificate will reflect the laboratory name, location, the approved categories and the effective dates of the certification period. The certification period will not exceed twelve months.~~

5.6.104 The Department will annually publish a list of certified laboratories.

## Part 6. Blood Forensic Toxicology – Collection and Testing Requirements

### 6.1 Blood Specimen Collection

#### 6.1.1 Blood Specimen(s) must be:

6.1.1.1 Collected in the presence of the arresting officer or other responsible person who can authenticate the specimens.

6.1.1.2 Collected and labeled following the instruction provided in the forensic blood collection kit.

6.1.1.3 Collected by venipuncture by a physician, nurse, paramedic, emergency medical technician, medical technologist, or a person who's training and normal duties include collecting blood specimens. under the supervision of a physician or nurse.

6.1.1.4 Collected only in an appropriate clinical or public safety facility (e.g., hospital, medical clinic, ambulance, police station, fire station or other approved facility). In no event will the collection of blood specimens interfere with the provision of essential medical care to the subject or the ready availability of emergency medical services to the public.

6.1.1.5 Collected using sterile equipment. The skin at the area of puncture must be thoroughly cleansed and disinfected with an aqueous solution of nonvolatile antiseptic. ETHYL Alcohol or phenol solutions must not be used as a skin antiseptic.

#### ~~6.1.2~~ After Collection, Blood Specimens must be:

6.1.~~1.62-4~~ 1.62-4 Dispensed or collected directly into two 10ml sterile tubes set to draw a (Nominal 10 ml) volume containing Sodium Fluoride (Nominal 100mg) and Potassium Oxalate (Nominal 20mg) preservative.

6.1.~~1.72-2~~ 1.72-2 Properly mixed in accordance with the instructions provided in the forensic blood collection kit.

6.1.~~1.82-3~~ 1.82-3 THE BLOOD COLLECTION TUBES MUST BE Affixed with a UNIQUE identification label THAT INCLUDES THE SUBJECT NAME and evidence seal.

6.1.~~1.92-4~~ 1.92-4 The specimens must be placed in secured STORAGE UNTIL SHIPPED. ~~temporary refrigerated storage at less than 8 degrees Centigrade or frozen until shipped.~~

6.1.1.10 IF SHIPPING IS DELAYED BY MORE THAN 48-HOURS, SAMPLES SHOULD BE REFRIGERATED AT OR BELOW 8 DEGREES CENTIGRADE AND NOT FROZEN IN ORDER TO PREVENT THE CONTAINER(S) FROM BREAKING.

6.1.1.11 WHENEVER POSSIBLE, sSpecimens SHOULD must be shipped within 7 days of collection BY THE LAW ENFORCEMENT AGENCY.-

## 6.2 Blood Specimen Testing

6.2.1 One tube of blood must be analyzed for the State's test(s). The State's test(s) must be performed and completed in a reasonable period of time as not to affect the validity of the test(s). Specimens found to be positive on the initial test(s) must be confirmed using a different chemical principle from the initial screening test when available, prior to reporting the results.

6.2.23 IN THE EVENT THAT NOT ENOUGH SPECIMEN IS PROVIDED TO COMPLETE THE STATE'S TEST(S) AND THE SECOND SAMPLE MUST BE USED, THE LABORATORY MUST OBTAIN AUTHORIZATION FROM THE APPROPRIATE AUTHORITY PRIOR TO TESTING.

6.2.342 Any remaining blood specimens must be retained and stored by the certified laboratory at OR BELOW less than 8 degrees Centigrade or frozen IN AN APPROPRIATE CONTAINER for a period of not less than 12 months from the date of collection unless requested and receipted by a representative of another certified laboratory, acting on behalf of the defendant.

6.2.423 The second blood specimen must be analyzed by a DEPARTMENT certified laboratory WHEN REQUESTED designated by the defendant or defendant's legal counsel. The test(s) must be performed and completed in a reasonable period of time as not to affect the validity of the test(s). Specimens found to be positive on the initial test(s) must be confirmed using a different chemical principle from the initial screening test when available, prior to reporting the results to a court of law.

## Part 7. Urine Forensic Toxicology – Collection and Testing Requirements

### 7.1 Urine Specimen Collection

7.1.1 Urine specimen(s) must be:

7.1.1.1 Collected in the presence of collection personnel who can authenticate the specimen(s).

7.1.1.2 Collected in a clean, sterile container.

7.1.1.3 Affixed with an UNIQUE identification label THAT INCLUDES THE SUBJECT NAME and evidence seal.

7.1.1.4 The specimens must be placed in secured temporary refrigerated storage UNTIL SHIPPED.

7.1.1.5 IF SHIPPING IS DELAYED BY MORE THAN 48-HOURS, SAMPLES SHOULD BE REFRIGERATED AT OR BELOW 8 DEGREES CENTIGRADE OR FROZEN IN AN APPROPRIATE CONTANER.at less than 8 degrees Centigrade or frozen until shipped.

7.1.1.6 WHENEVER POSSIBLE, Specimens ~~SHOULD~~ ~~must~~ be shipped within 7 days of collection BY THE LAW ENFORCEMENT AGENCY.

## 7.2 Urine Specimen Testing

7.2.1 The State's test(s) must be performed and completed in a reasonable period of time as not to affect the validity of the test(s). Specimens found to be positive on the initial test(s) must be confirmed using a different chemical principle from the initial screening test when available, prior to reporting the results.

7.2.2~~32~~ Any remaining urine specimen(s) must be retained by the certified laboratory AT OR BELOW 8 DEGREES CENTIGRADE OR FROZEN IN AN APPROPRIATE CONTAINER ~~in frozen storage~~ for a period of not less than 12 months unless requested and receipted by a representative from another certified laboratory acting on behalf of the defendant.

7.2.3~~23~~ Any remaining urine specimen(s) must be analyzed by a DEPARTMENT certified laboratory WHEN REQUESTED ~~designated~~ by the defendant or defendant's legal counsel. The test(s) must be performed and completed in a reasonable period of time as not to affect the validity of the test(s). Specimens found to be positive on the initial test(s) must be confirmed using a different chemical principle from the initial screening test when available, prior to reporting the results to a court of law.

## Part 8. Post~~m~~-Mortem Forensic Toxicology – Collection and Testing Requirements

### 8.1 Post~~m~~-Mortem Specimen Collection

8.1.1 Collection of specimens from deceased persons ~~is~~ conducted ~~as~~-per Section 42-4-1304, C.R.S. WILL BE PERFORMED by a person who's training and normal duties include the collection of blood OR OTHER BODILY SUBSTANCES ~~specimens~~ from deceased persons.

8.1.1.1 ANY PERSON COLLECTING SPECIMENS PURSUANT TO SECTION 42-4-1304, C.R.S. MUST BE CERTIFIED BY THE DEPARTMENT.

8.1.1.2 TO BECOME CERTIFIED ANY PERSON COLLECTING SPECIMENS PURSUANT TO SECTION 42-4-1304, C.R.S., WILL, IN THE FORM AND MANNER REQUIRED BY THE DEPARTMENT, DEMONSTRATE THAT THEY SATISFY RULE 8.1.2.

8.1.2 INDIVIDUALS, WHO COLLECT SPECIMENS FROM DECEASED PERSONS, MAY BE CERTIFIED BY THE DEPARTMENT WHEN ANY OF THE FOLLOWING REQUIREMENTS ARE MET.

8.1.2.1 A MEDICAL PROVIDER AS DEFINED BY SECTION 12-36-106, C.R.S., LICENSED TO PRACTICE MEDICINE IN THE STATE OF COLORADO WHOSE SCOPE OF PRACTICE AND NORMAL DUTIES INCLUDE THE COLLECTION OF SPECIMENS FROM DECEASED PERSONS.

8.1.2.1.2 INDIVIDUALS SUPERVISED BY A MEDICAL PROVIDER, AS DEFINED IN 8.1.2.1, WHO'S SCOPE OF PRACTICE AND NORMAL DUTIES INCLUDE THE COLLECTION OF SPECIMENS FROM DECEASED PERSONS.

8.1.2.2 AN INDIVIDUAL SERVING AS A COLORADO COUNTY CORONER AND WHO'S NORMAL DUTIES INCLUDE THE COLLECTION OF SPECIMENS FROM DECEASED PERSONS.

8.1.2.2.1 INDIVIDUALS SUPERVISED BY A COLORADO COUNTY CORONER, AS DEFINED IN 8.1.2.2, WHO'S NORMAL DUTIES INCLUDE THE COLLECTION OF SPECIMENS FROM DECEASED PERSONS.

8.1.2.3 EMERGENCY MEDICAL SERVICE PROVIDERS CERTIFIED BY THE DEPARTMENT AS DEFINED BY ~~SECTION~~ 25-3.5-203 C.R.S. WHOS NORMAL DUTIES INCLUDE THE COLLECTION OF SPECIMENS FROM DECEASED PERSONS.

8.1.3 NO PERSON HAVING CUSTODY OF THE BODY OF THE DECEASED SHALL PERFORM ANY INTERNAL EMBALMING PROCEDURE UNTIL A BLOOD AND URINE SPECIMEN TO BE TESTED FOR ALCOHOL, DRUG AND CARBON MONOXIDE CONCENTRATIONS HAS BEEN TAKEN.

8.1.~~42~~ The laboratory must develop and provide detailed guidelines and instructions for the collection of post-mortem specimens THAT INCLUDES THE DATE AND TIME OF COLLECTION, THE TIME OF THE INCIDENT AND THE TIME OF DEATH.

8.1.~~53~~ Each specimen should be labeled with the name of the subject from whom the specimens were collected together with other appropriate identification; for example, the medical examiner's case number and/or a unique identification number.

8.1.~~64~~ Whenever possible, the amount of specimen collected should be sufficient to allow for analysis of one or more analytes if needed at a later date.

## 8.2 Post~~m-~~Mortem Specimen Testing

8.2.1 Post-mortem test(s) must be performed and completed within a reasonable period of time as to not affect the validity of the test(s). Specimens found to be positive on the initial test(s) must be confirmed prior to reporting the results.

8.2.2 Any remaining post-mortem specimens must be retained AND STORED by the certified laboratory AT OR BELOW 8 DEGREES CENTIGRADE OR FROZEN IN AN APPROPRIATE CONTAINER for a period of not less than 12 months FROM THE DATE OF COLLECTION unless requested and receipted by a representative from another certified laboratory FOR ADDITIONAL TESTING. ~~acting on behalf of the defendant.~~

## Part 9. ~~Violations and Remedies~~ DUI and DUID Forensic Toxicology Laboratory Certification Standards

### 9.1 Personnel

9.1.1 The laboratory must have a Laboratory Director. The Laboratory Director is responsible for the overall operation and administration for the laboratory as well as for assuring compliance with these regulations and the accuracy of the results reported by the laboratory.

9.1.2 The Laboratory Director must meet ONE the following qualifications: board certified in clinical pathology by the American Board of Pathology OR certified as a Diplomate by the American Board of Forensic Toxicology (ABFT); or alternatively, have a doctoral degree in one of the natural sciences and at least three years of full-time laboratory experience in

forensic toxicology; or a master's degree in one of the natural sciences and at least four years of full-time experience in forensic toxicology; or a bachelor's degree in one of the natural sciences and at least five years full-time experience in forensic toxicology.

9.1.3 The Laboratory Director IS ULTIMATELY RESPONSIBLE FOR THE SUPERVISION OF ALL LABORATORY OPERATIONS AND PERSONNEL AND TO ENSURE COMPLIANCE WITH THE REQUIREMENTS OF THIS RULE. THE LABORATORY DIRECTOR MAY DELEGATE SUPERVISORY RESPONSIBILITIES TO A DESIGNEE AS LONG AS THOSE RESPONSIBILITIES ARE DESIGNATED IN WRITING. ~~must supervise and maintain documentation that the established protocols of the laboratory are being followed and monitored on an ongoing basis to ensure compliance (the Supervisory Analyst can be delegated this responsibility if designated in writing).~~

9.1.4 THE TECHNICAL PERSONNEL MUST HAVE A MINIMUM OF AN ASSOCIATE DEGREE IN A LABORATORY SCIENCE OR, ONE YEAR TRAINING IN AN ACCREDITED LABORATORY SCIENCES PROGRAM AND ONE YEAR DOCUMENTED ON THE JOB LABORATORY EXPERIENCE

9.1.5 The Laboratory Director or DESIGNEE must ensure policies and procedures to assess the competency of TECHNICAL PERSONNEL ENGAGED IN TESTING ~~Testing Analyst(s)~~ are established, followed and documented.

9.1.6 Competency assessments must be performed and documented on ALL new TECHNICAL PERSONNEL prior to reporting results; on existing TECHNICAL PERSONNEL on an ~~ongoing~~ ANNUAL basis; and on all TECHNICAL PERSONNEL when a method or instrumentation is added or modified by the laboratory prior to reporting subject results. The competency assessments and documentation must be consistent with the laboratory's written training policies and procedures.

9.1.7 The laboratory must maintain documentation of FORMAL education, training, and experience for the Laboratory Director AND TECHNICAL PERSONNEL.

9.1.8 The laboratory must have a written job description for each position in the laboratory.

## 9.2 Standard Operating Procedure Manual

9.2.1 The laboratory must have a written procedure manual for the performance of all methods of analytes it reports available for TECHNICAL PERSONNEL to follow at all times.

9.2.2 The current Laboratory Director OR DESIGNEE must approve, sign and date each procedure.

9.2.3 The ~~Laboratory Director~~ OR DESIGNEE must approve, initial, and date each change or revision to the procedure.

9.2.4 THE LABORATORY MUST MAINTAIN COPIES OF PREVIOUS STANDARD OPERATING PROCEDURES WITH EFFECTIVE DATE OF USE, FOR A MINIMUM OF 5 YEARS FROM THE DATE LAST USED.

9.2.5 The Standard Operating Procedure (SOP) manual must include the following criteria and processes for laboratory personnel to follow.

9.2.5.1 Specimen receiving

9.2.5.2 Specimen accessioning



879	<u>9.2.5.3 Specimen storage</u>
880	<u>9.2.5.4 Identifying and rejecting unacceptable specimens</u>
881	<u>9.2.5.5 Recording and reporting discrepancies</u>
882	<u>9.2.5.6 Security of specimens, aliquots and/or extracts and records</u>
883	<u>9.2.5.7 Validation of a new or revised method prior to testing specimens to include:</u>
884	<u>accuracy, precision, analytical sensitivity, analytical specificity (interferences), limit of</u>
885	<u>detection (LOD), limit of quantitation (LOQ) and verification of the reportable range</u>
886	<u>9.2.5.8 Aliquoting specimens to avoid contamination and/or carry-over</u>
887	<u>9.2.5.9 Sample retention to assure stability for one year</u>
888	<u>9.2.5.10 Disposal of specimens</u>
889	<u>9.2.5.11 The theory and principles behind each assay</u>
890	<u>9.2.5.12 Preparation and identification of reagents, standards, calibrators and controls</u>
891	<u>9.2.5.13 Special requirements and safety precautions involved in performing assays</u>
892	<u>9.2.5.14 Frequency and number of control and calibration materials</u>
893	<u>9.2.5.15 Recording and reporting assay results</u>
894	<u>9.2.5.16 Protocol and criteria for accepting or rejecting analytical data</u>
895	<u>9.2.5.17 Procedure to verify the accuracy of the final report</u>
896	<u>9.2.5.18 Pertinent literature references for each method</u>
897	<u>9.2.5.19 Current step-by-step instructions with sufficient detail to perform the</u>
898	<u>assay to include equipment operation and any abbreviated versions used by the</u>
899	<u>TECHNICAL PERSONNEL.</u>
900	<u>9.2.5.20 Acceptability criteria for the results of calibration standards and controls</u>
901	<u>as well as between two aliquots or columns.</u>
902	<u>9.2.5.21 A documented system for reviewing the results of testing calibrators,</u>
903	<u>controls, standards, and subject tests results, as well as reviewing for clerical</u>
904	<u>errors, analytical errors and any unusual analytical results. <del>Corrective actions</del></u>
905	<u><del>implemented, and (when applicable).</del></u>
906	<u>9.2.5.22 A DOCUMENTED SYSTEM FOR THE REVIEW, NOTIFICATION AND</u>
907	<u>IMPLEMENTATION OF CORRECTIVE ACTIONS TO INCLUDE WHEN</u>
908	<u>APPLICABLE, CONTACTING THE REQUESTING AGENCY.</u>
909	<u>9.2.5.23 Policies and procedures to follow when specimens are requested for</u>
910	<u>referral and testing by another certified laboratory.</u>
911	<u>9.3 Proficiency Testing (PT)</u>

9.3.1 The laboratory MUST HAVE A DOCUMENTED SYSTEM FOR THE REVIEW AND EVALUATION OF ALL PT RESULTS IN A TIMELY MANNER BY THE LABORATORY DIRECTOR AND ALL TECHNICAL PERSONNEL WHO PARTICIPATED IN THE PT EVENT.~~director and all participating in the PT challenge must sign~~

9.3.2 The laboratory must maintain a copy of all records and DOCUMENTATION FOR A MINIMUM OF 5 YEARS from the date of the proficiency testing event.

#### 9.4 Quality Assurance and Quality Control

9.4.1 The laboratory must check and document the accuracy of automatic and/or adjustable pipettes and other measuring devices when placed into service and annually thereafter.

9.4.2 The laboratory must clean, maintain, and calibrate, as needed, the analytical balances and in addition, verify the performance of the balance annually using certified weights to include three or more weights bracketing the ranges of measurements used by the laboratory.

9.4.3 The laboratory must annually verify and document the accuracy of thermometers using a reference thermometer.

9.4.4 The laboratory must record temperatures on all equipment when in use where temperature control is specified in SOP's, such as water baths, heating blocks, incubators, ovens, refrigerators, and freezers.

9.4.5 The laboratory must properly label reagents as to the identity, the concentration, date of preparation, storage conditions, lot number tracking, expiration date, and the identity of the preparer (WHEN APPLICABLE).

9.4.6 The laboratory must avoid mixing different lots of reagents in the same analytical run.

9.4.7 FOR QUANTITATIVE ANALYSIS, THE LABORATORY MUST PERFORM AND DOCUMENT A CALIBRATION CURVE THAT HAS A CORRELATION COEFFICIENT OF 0.99 OR GREATER USING AT MINIMUM FOUR CALIBRATORS THAT ENCOMPASS THE REPORTABLE RANGE.~~The laboratory must perform and document a calibration curve with each analysis (that has a correlation coefficient of 0.99 ) using at least calibrators throughout the reporting range.~~

9.4.8 IF THE LABORATORY USES HISTORICAL CALIBRATION DATA FOR AN ASSAY, CONTROLS MUST BE RUN WITH EACH BATCH OF SPECIMENS TO VERIFY VALIDITY OF THE CALIBRATION INCLUDING AT OR CLOSE TO THE REPORTING LIMITS. IT IS ACCEPTABLE FOR LABORATORIES TO USE HISTORICAL CALIBRATION CURVES ONLY IF THEY HAVE DEMONSTRATED AND DOCUMENTED THE LINEARITY AND PRECISION OF THE CURVE OVER TIME. CALIBRATION MUST BE VALIDATED BY USING CONTROLS WITH EACH BATCH OF SPECIMENS TO COVER THE ENTIRE RANGE OF THE CALIBRATION CURVE.

9.4.9 For qualitative analyses, the laboratory must analyze, at minimum, a negative CONTROL and a positive control with each ANALYTICAL RUN of samples analyzed.

9.4.10 For quantitative analyses, the laboratory must analyze, at minimum, a negative CONTROL and two levels of POSITIVE controls that challenge the ENTIRE CALIBRATION CURVE.



9.4.11 The laboratory must use control material(s) (when possible) that differs in either source or, lot number, or concentration from the calibration material used with each analytical run. IN INSTANCES WHERE THE SAME SOURCE MUST BE UTILIZED, SEPARATE WEIGHINGS OR SOLUTIONS MUST BE USED TO PREPARE THESE CONTROLS.

9.4.12 For multi-analyte assays, the laboratory must perform and document calibration curves and controls specific to each analyte, or at minimum, one with similar chemical properties as reported in the ANALYTICAL RUN.

9.4.13 The laboratory must analyze at least one CONTROL THAT IS FROM A commercially prepared SOLUTION control that is certified by an ISO/-IEC 17043 accredited manufacturer when available, which must be within (10% for ethanol and 20% for blood and urine drugs) the stated assayed value with each analytic run.

9.4.14 The laboratory must analyze an appropriate matrix MATCHED NEGATIVE and POSITIVE control with each analytical run, when available.

9.4.15 The laboratory must analyze calibrators and controls in the same manner as unknowns.

9.4.16 The laboratory must define acceptability criteria for calibration standards and controls for all assays, SUCH THAT THEY ARE WITHIN 10% FOR ETHANOL AND 20% FOR BLOOD AND URINE DRUGS, OF THE TARGET VALUE.

NOTE: A SLIGHTLY WIDER ACCEPTABLE VALUE (E.G. +/-25% OR +/-30%) FOR CALIBRATORS AND CONTROLS THAT APPROACH THE LOQ OF THE ASSAY IS PERMITTED.

9.4.17 The laboratory must monitor and document the performance of calibrator and control materials on an ongoing basis to ensure performance does not exceed the laboratory's established criteria of acceptability.

9.4.18 The laboratory must have written criteria to follow when corrective action is required for ANY unacceptable calibration, control, and standard or instrument performance.

9.4.19 The laboratory must document the corrective actions taken when an unacceptable calibration, control, standard, or other reagent result exceeds the laboratory's criteria of acceptability.

9.4.20 Corrective actions must be documented and reviewed by the Laboratory Director or DESIGNEE on an ongoing basis to ensure the effectiveness of the actions taken.

9.4.21 The laboratory must maintain records of validation data for any new or modified methods to include; accuracy, precision, analytical specificity (interferences), limit of detection (LOD), limits of quantitation (LOQ) and verification of the REGRESSION model.

9.4.22 Analytical methods must be developed by the laboratory such that screening and confirmation testing can be completed on no more than 5 mL of sample volume.

9.4.23 The analyst must follow the SOP for the tests performed.

## 9.5 —Chain of Custody, Security, and Specimen Retention Facility Space

9.5.1 The laboratory must have a system to document the complete chain of custody of all forensic specimens TO INCLUDE RECEIPT, STORAGE, PERSONNEL HANDLING THE SPECIMENTS, EXTERNAL TRANSFERS AND DISPOSAL. ~~from receipt to disposal.~~

- 9.5.2 The laboratory must issue instructions to user agencies that include the requirements for specimen types(s), UNIQUE identification, and volume.
- 9.5.3 The laboratory must document the condition of the SAMPLE, external package and individual evidence seals.
- 9.5.4 The laboratory must compare the evidence seals against the corresponding requisition and document any discrepancies. When discrepancies occur, documentation must state how the discrepancy was resolved.
- 9.5.5 The laboratory must maintain a current list of authorized personnel.
- 9.5.6 The laboratory must restrict entry into the laboratory only to authorized personnel.
- 9.5.7 The laboratory must have provisions for securing the laboratory during non-working hours.
- 9.5.8 The laboratory must secure short and long-term storage areas when not in use.
- 9.5.9 The laboratory must log in and aliquot specimens in a secure area.
- 9.5.10 There must be adequate space to perform the analyses in the laboratory.
- 9.6 Records and Reporting
- 9.6.1 All instrumentation and analysis records maintained by the testing laboratory must be retained for a period of not less than 5 years.
- 9.6.2 Prior to reporting results, all specimens that have been identified as positive on an initial screening drug test must be confirmed using a second analytical procedure using a different chemical principle from the initial screening test when available or as applicable.
- 9.6.3 The laboratory must confirm the identity of an analyte using a different extract of the same specimen than was used for the screening test.
- 9.6.4 Prior to reporting results, all blood ethanol results must be confirmed using a second GC column where the results from the second column had A significant difference in retention time and a change in elution order of some of the common volatiles from the column utilized in the initial COLUMN.
- 9.6.5 When blood samples are screened for ethanol by HEAD SPACE Gas Chromatography WITH FLAME IONIZATION DETECTION (if applicable), a separate aliquot from the original specimen must be used for confirmation. (e.g. two separate aliquots should be tested for blood alcohol)
- 9.6.6 FOR POSTMORTEM TESTING (IF APPLICABLE), THE LABORATORY MUST CONFIRM THE IDENTITY OF A DRUG ANALYTE OR ALCOHOL CONCENTRATION USING A SECOND COLUMN AND A DIFFERENT EXTRACT FROM THE SAME SAMPLE, OR USE A DIFFERENT SAMPLE MATRIX FROM THE SAME SUBJECT WHEN POSSIBLE.
- 9.6.7 The laboratory must only report quantitative results that ARE WITHIN THE CALIBRATION CURVE.

9.6.8 The laboratory must verify results that are OUTSIDE THE CALIBRATION CURVE IN A MANNER CONSISTENT WITH THE LABORATORY'S SOPS.

9.6.9 The laboratory must qualitatively report results below the lowest concentration of calibrator or standard and above the Limit of Detection (LOD) AS A SEMI-QUANTITATIVE RESULT. (E.G. LESS THAN OR GREATER THAN X MG/L)

9.6.10 The laboratory must maintain records of testing FOR AT LEAST 5 YEARS to include: accession numbers, specimen type, raw data FROM THE ANALYTICAL RUN, controls, and subject results, final and/OR amended reports, acceptable reference range parameters, identification of TECHNICAL PERSONNEL WHO PERFORMED THE TESTING, and date of analysis.

~~9.6.11 The laboratory must adequately document the available external chain of custody information.~~

9.6.12 The laboratory's final report must contain the name and location of the laboratory where the testing was performed, name and unique identifier of subject, submitting agency, sample received date, date of report, type of specimen tested, test result, units of measure, and any other information or qualifiers needed for interpretation when applicable to the test method and results being reported, to include any identified and documented discrepancies.

9.6.13 The laboratory must develop an adequate discovery packet that meets the requirements specified in Part 1.5 of these rules and regulations.

## 9.7 ANALYTICAL PROCESS

### 9.7.1 GENERAL REQUIREMENTS

9.7.1.1 THE LABORATORY MUST DOCUMENT THE CONDITIONS OF THE INSTRUMENTS TO INCLUDE THE DETECTOR RESPONSE, TUNE AND VALIDATION OF NEW CHROMATOGRAPHY COLUMNS (WHEN APPLICABLE).

9.7.1.2 THE LABORATORY MUST PERFORM AND DOCUMENT PREVENTATIVE MAINTENANCE AS REQUIRED BY THE MANUFACTURER.

9.7.1.3 THE MAINTENANCE RECORDS MUST BE READILY AVAILABLE TO THE TECHNICAL PERSONNEL.

9.7.1.4 THE LABORATORY MUST USE AN INTERNAL STANDARD FOR EACH QUALITATIVE AND QUANTITATIVE ANALYSIS THAT HAS SIMILAR CHEMICAL AND PHYSICAL PROPERTIES TO THAT OF THE COMPOUND IDENTIFIED AND IS ISOTOPICALLY LABELED WHEN AVAILABLE.

9.7.1.5 THE LABORATORY MUST DOCUMENT THE MONITORING OF THE RESPONSE (AREA OR PEAK HEIGHT) OF THE INTERNAL STANDARD TO ENSURE CONSISTENCY OVER TIME OF THE ANALYTICAL SYSTEM.

9.7.1.6 THE LABORATORY MUST MONITOR ANALYSES TO CHECK FOR CONTAMINATION AND/OR CARRY-OVER.

1069 9.7.1.7 THE LABORATORY MUST HAVE WRITTEN ACCEPTABILITY CRITERIA FOR  
1070 VARIANCE BETWEEN THE RESULTS WHEN THE SAME ANALYTE IS  
1071 QUANTIFIED IN MULTIPLE ANALYSES.

1072 9.7.1.8 THE LABORATORY MUST EVALUATE THE PERFORMANCE OF THE  
1073 INSTRUMENT AFTER ROUTINE AND PREVENTATIVE MAINTENANCE  
1074 PRIOR TO ANALYZING SUBJECT SAMPLES.

1075 9.7.1.9 IF THE LABORATORY HAS WRITTEN ITS OWN SOFTWARE, THE  
1076 LABORATORY MUST HAVE DOCUMENTATION THE SOFTWARE'S  
1077 ACCURACY WAS VERIFIED.

1078 9.7.2 HEAD SPACE GAS CHROMATOGRAPHY WITH FLAME IONIZATION DETECTION  
1079 (HS-GC-FID)

1080 9.7.2.1 THE LABORATORY MUST HAVE ESTABLISHED CRITERIA OF  
1081 ACCEPTABILITY NOT TO EXCEED 10% FOR VARIANCES BETWEEN THE  
1082 RESULTS OF THE BLOOD ETHANOL ANALYSIS USING DIFFERENT  
1083 ALIQUOTS AND BETWEEN DIFFERENT COLUMNS.

1084 9.7.3 —Gas Chromatography WITH MASS SPECTROMETERY (GC-MS)

1085 9.7.3.1 The laboratory must document the changes of septa as specified in the SOP.

1086 9.7.3.2 The laboratory must document changes and/or replacements of liners as  
1087 specified in the SOP.

1088 9.7.3.3 The laboratory must have written criteria for an acceptable tune for the mass  
1089 spectrometer. WHEN THE TUNE IS UNACCEPTABLE, CORRECTIVE ACTION  
1090 TO INCLUDE ADDITIONAL MAINTENANCE MUST BE DOCUMENTED (IF  
1091 APPLICABLE).

1092 9.7.3.4 If the laboratory uses selected ion monitoring, the laboratory must compare ion  
1093 ratios and retention times between calibrators, controls and SAMPLES for  
1094 identification of an analyte within the same ANALYTICAL run.

1095 9.7.3.5 If the laboratory uses a library match to qualitatively identify an analyte, the  
1096 laboratory must compare the relative retention time and mass spectra from a  
1097 known standard or control run on the same INSTRUMENT before reporting the  
1098 results.

1099 9.7.4 —Immunoassays

1100 9.7.4.1 If the laboratory tests specimens different from what the manufacturer has  
1101 approved for the assay, or if the laboratory modified the test method from the  
1102 manufacturer instructions, the laboratory must have documentation of the  
1103 validation.

1104 9.7.5 LIQUID CHROMATOGRAPHY WITH MASS SPECTROMETRY OR WITH TANDEM  
1105 MASS SPECTROMETRY (LCMS, LCMS/MS)

1106 9.7.5.1 THE LABORATORY MUST MAINTAIN RECORDS OF THE MASS  
1107 SPECTROMETER CALIBRATION.

9.7.5.2 THE LABORATORY MUST CONFIRM THE IDENTITY OF AN ANALYTE BY LC-MS/MS (SCREENING OR QUANTITATION) WITH AT LEAST TWO TRANSITIONS IN ADDITION TO THE LABORATORY'S RETENTION TIME CRITERIA.

9.7.5.3 IF THE LABORATORY RECYCLES ELUTING SOLVENTS, THERE MUST BE WRITTEN ACCEPTABILITY STANDARDS.

—Part 10. Violations and Remedies

10.19.4 Violations

10.1.19.4.1 It is a violation of these rules and regulations to perform EBAT testing without the appropriate certification for the EBAT instrument, operator or instructor.

10.1.2 9.1.2 Violation of these rules and regulations may result in denial, suspension or revocation of certification as outlined in Part 8 of these rules and regulations.

10.1.3 9.1.3 Generally, a violation will not be cited if:

10.1.3.1 9.1.3.1 The violation was unavoidable to prevent loss of life, personal injury or severe property damage or there were no feasible alternatives, and provided that proper notification was given to the Department.

10.1.3.2 9.1.3.2 The violations resulted from matters beyond the control of the facility or laboratory, such as equipment failures that were unavoidable by reasonable quality assurance measures or management controls.

9.210.2 Complaints

10.2.19.2.1 Complaints received by the Department will be investigated to determine if the claim is substantiated or unsubstantiated. Complaints received will be documented and an investigation may include and result in, but is not limited to, the following actions: desk review of documentation requested by the Department from the laboratory, unannounced onsite survey, limitation, suspension, or revocation of the laboratory's certification.

10.3 9.3 Right to appeal the denial, suspension or revocation of certification.

10.3.1 9.3.1 Any certified facility, certified laboratory, operator or instructor whose certification is denied, suspended or revoked under these regulations may seek appeal of that determination pursuant to ~~section~~ Section 24-4-105, C.R.S.

9.410.4 Denial, Suspension or Revocation of Certification:

10.4.19.4.1 The Department may deny, suspend or revoke the certification of EBAT instrument(s) located in an approved facility, the certification of an instructor, the certification of an operator or the certification of a laboratory for one or more of the following causes:

10.4.1.19.4.1.1 Falsification of data or other deceptive practices including false statements by omission or commission relevant to the certification process.

10.4.1.29.4.1.2 Refusing authorized Department personnel access to the laboratory or facility, or failure to provide requested records to the Department for the purpose of determining compliance with these rules and regulations.

10.4.1.39.4.1.3 Gross incompetence or negligent practice.

10.4.1.49.4.1.4 Willful or repeated violation of any lawful rule, regulation or order of the Department or the Board of Health and its officers.

10.4.1.59.4.1.5 Inadequate space, equipment, or methods utilized for testing.

10.4.1.69.4.1.6 Submission of any test results of another person as those of the subject being evaluated.

10.4.1.79.4.1.7 For a laboratory, failure to successfully participate in proficiency testing.

10.4.1.89.4.1.8 For a laboratory, the receipt of consecutive "Unsatisfactory" evaluations, or achievement of an "Unsatisfactory" score in 2 of any 3 consecutive proficiency testing events.

10.4.1.99.4.1.9 For a laboratory, contact with another laboratory concerning proficiency test results prior to the due date of those results.

#### 10.59.5 Injunction

10.5.19.5.1 —The Department may seek an injunction against any entity for failure to comply with these rules and regulations.

### APPENDIX A—Evidential Breath Alcohol Testing (EBAT) Annual Facility Inspection (AFI) Report

#### Evidential Breath Alcohol Testing (EBAT) Annual Facility Inspection (AFI) Report

**Date:** \_\_\_\_\_

**Agency:** \_\_\_\_\_

**Instructor(s):** \_\_\_\_\_

**Phone: ( )** \_\_\_\_\_ **Fax: ( )** \_\_\_\_\_

**E-Mail:** \_\_\_\_\_ **Type Of Inspection:** \_\_\_\_\_

**EBAT Instrument Serial Number:** \_\_\_\_\_

---

**A. Initial EBAT Facility Certification**

---

1. **Facilities must submit a formal request to the Department requesting certification on official agency letterhead.**
- ☐ Not Applicable
  - ☐ Acceptable
  - ☐ Not Acceptable/correction required
- Comments: [REDACTED]  
Date Received: [REDACTED]
2. **Verification from a certified electrician confirming the certified EBAT instrument is on a dedicated power circuit of no more than 20 amps.**
- ☐ Not Applicable
  - ☐ Acceptable
  - ☐ Not Acceptable/correction required
- Comments: [REDACTED]  
Date Received: [REDACTED]
- 
3. **Verification of review by the facility of Part 3 and Appendix A prior to requesting certification.**
- ☐ Not Applicable
  - ☐ Acceptable
  - ☐ Not Acceptable/Correction Required
- Comments: [REDACTED]  
Date Received: [REDACTED]
4. **Verification from the facility that the EBAT instrument has dedicated communication lines installed and active.**
- ☐ Not Applicable
  - ☐ Acceptable
  - ☐ Not Acceptable/Correction Required
- Comments: [REDACTED]  
Date Received: [REDACTED]

---

**B. Power Requirements—EBAT Permanent Location**

---

**1. AC line voltage of 120 volts, 60 Hz grounded outlet on a dedicated circuit.**

**1a. 20 ampere maximum circuit breaker**

- ☐ Acceptable  
☐ Not Acceptable/Correction Required  
Comments:

**1b. Voltage  $120 \pm 12\text{v}$  (108-132)**

- ☐ Acceptable  
☐ Not Acceptable/Correction Required  
Comments:

---

**1c. Grounded outlet**

- ☐ Acceptable  
☐ Not Acceptable/Correction Required  
Comments:

**2. The power line to the EBAT instrumentation must be on a dedicated circuit.**

- ☐ Acceptable  
☐ Not Acceptable/Correction Required  
Comments:

**3. An adequate surge protection device must be placed between the EBAT instrumentation and the power source.**

- ☐ Acceptable  
☐ Not Acceptable/Correction Required  
Comments:



---

**C. Power Requirements—EBAT Mobile Location**

---

1. **Sine wave power inverter capable of providing a steady 120 volts AC output from a DC input.**

☐ Not Applicable  
☐ Acceptable  
☐ Not Acceptable/Correction Required  
Comments:

2. **The power line to the EBAT instrumentation must be on a dedicated circuit.**

☐ Not Applicable  
☐ Acceptable  
☐ Not Acceptable/Correction Required  
Comments:

3. **An adequate surge protection device must be placed between the EBAT instrumentation and the power source.**

☐ Not Applicable  
☐ Acceptable  
☐ Not Acceptable/Correction Required  
Comments:

---

**D. EBAT INSTRUMENTATION ENVIRONMENT**

---

1. **The temperature of the EBAT instrumentation room must be maintained between 60 and 90 degrees Fahrenheit.**

☐ Acceptable  
☐ Not Acceptable/Correction Required

Comments:

2. **The EBAT instrumentation room must have adequate lighting.**

☐ Acceptable  
☐ Not Acceptable/Correction Required

Comments:

3. **The area around and under the EBAT instrumentation must be free of dust, dirt, and kept orderly.**

☐ Acceptable  
☐ Not Acceptable/Correction Required

Comments:

4. **The EBAT instrumentation must be placed on a solid and adequate work surface.**

☐ Acceptable  
☐ Not Acceptable/Correction Required

Comments:

---

5. **The EBAT instrumentation room receives adequate ventilation.**

☐ Acceptable  
☐ Not Acceptable/Correction Required

Comments:

6. **Automobile emissions are not allowed in the EBAT instrumentation room.**

☐ Acceptable  
☐ Not Acceptable/Correction Required

Comments:

7. **The EBAT instrumentation must not have cleaning compounds or volatile organics (gasoline and petroleum products) used or stored around it.**

☐ Acceptable  
☐ Not Acceptable/Correction Required

Comments:

8. **The EBAT instrumentation room must remain secure and not readily accessible to unauthorized personnel.**

☐ Acceptable  
☐ Not Acceptable/Correction Required

Comments:

---

**E. EBAT Documents**

---

- 1. The following certified EBAT instrumentation documents must be posted at the EBAT facility:**

**1e. EBAT instrument certification certificate**

- ☐ Acceptable  
☐ Not Acceptable/Correction Required

Comments:

**2e. EBAT instrument exception report reference table**

- ☐ Acceptable  
☐ Not Acceptable/Correction Required

Comments:

- 2. EBAT instrumentation records applicable to the agency must be retained by the certified EBAT facility for a minimum of 5 years.**

- ☐ Acceptable  
☐ Not Acceptable/Correction Required

Comments:

---

---

**F. EBAT Supplies**

---

- 1. The EBAT facility must have available an adequate supply of mouth pieces:**

- ☐ Acceptable  
☐ Not Acceptable/Correction Required

Comments:

- 2. The EBAT facility must have available an adequate supply of standard simulator solution**

- ☐ Acceptable  
☐ Not Acceptable/Correction Required

Comments:

Lot #:

---

**G. EBAT Instrumentation**

---

**1. EBAT instrument test sequence**

- ☐ Acceptable
- ☐ Not Acceptable/Correction Required
- Comments:

**2. EBAT instrument time and date**

- ☐ Acceptable
- ☐ Not Acceptable/Correction Required
- Comments:

**3. EBAT instrument certification date**

- ☐ Acceptable
- ☐ Not Acceptable/Correction Required
- Comments:
- Certification Date:
- Posted Certification Date:

**4. EBAT instrument external breath tube heating**

- ☐ Acceptable
- ☐ Not Acceptable/Correction Required
- Comments:
- Temperature:

**5. EBAT instrument dedicated data line**

- ☐ Not Applicable
- ☐ Acceptable
- ☐ Not Acceptable/Correction Required
- Comments:

**6. EBAT instrument dedicated analog phone line**

- ☐ Not Applicable
- ☐ Acceptable
- ☐ Not Acceptable/Correction Required
- Comments:
- Analog phone #:

**7. The EBAT instrumentation must not be moved from the location it was certified for without prior authorization from the Department.**

- ☐ Acceptable
- ☐ Not Acceptable/Correction Required
- Comments:

**8. The EBAT instrumentation must be operated in a smoke-free environment.**

- ☐ Acceptable  
☐ Not Acceptable/Correction Required  
Comments:

---

**H. EBAT Instrumentation Simulators**

---

**1. Active Simulator**

Serial Number: .....  
Display Reading: (33.8°C - 34.2°C) ..... °C  
Digital Thermometer Reading: Minimum ..... °C  
Digital Thermometer Reading: Maximum ..... °C  
Comments:

**2. Back-Up Simulator**

Serial Number: .....  
Display Reading: (33.8°C - 34.2°C) ..... °C  
Digital Thermometer Reading: Minimum ..... °C  
Digital Thermometer Reading: Maximum ..... °C  
Comments:

**3. Back-Up Simulator**

Serial Number: .....  
Display Reading: (33.8°C - 34.2°C) ..... °C  
Digital Thermometer Reading: Minimum ..... °C  
Digital Thermometer Reading: Maximum ..... °C  
Comments:

**Calibrated Thermometer Information:**

Thermometer: .....  
Serial Number: .....  
Last Certification: .....  
Next Certification: .....  
Correction Factor: .....

---

**I. Record Review**

---

**1. 0.100 g/210 liters Standard Simulator Solution in use.**

- ☐ Acceptable  
☐ Not Acceptable/Correction Required

Comments: Standard Trend: **2. Corrective actions taken by the certified EBAT instructor or operator are appropriate and timely when exception messages are encountered.**

- ☐ Acceptable  
☐ Not Acceptable/Correction Required

Comments: **3. Standard Simulator Solution is changed as necessary and when required.**

- ☐ Acceptable  
☐ Not Acceptable/Correction Required

Comments: **4. Automated 7-Day calibration checks performed.**

- ☐ Acceptable  
☐ Not Acceptable/Correction Required

Comments: **5. Average number of tests per month:** **EBAT:** **Training:** **Exception Reports:** 

1174

1175

1176

# APPENDIX B – DUI and DUID Forensic Toxicology Laboratory Certification Application

## APPENDIX B – DUI and DUID Forensic Toxicology Laboratory Certification Application

### DUI and DUID Forensic Toxicology Laboratory Certification Application

Laboratories are certified by the Colorado Department of Public Health and Environment as authorized by the Colorado Board of Health Rules and Regulations 5 CCR 1005-2, Testing for Alcohol and Other Drugs

#### APPLICATION TYPE

☐ Initial    ☐ Update (Include any required documentation)    ☐ Re-Certification (Must be received by June 1)

Laboratory Name: \_\_\_\_\_

Laboratory Director: \_\_\_\_\_

Facility Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

(If different from facility address)

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: (\_\_\_\_) \_\_\_\_\_ Fax Number: (\_\_\_\_) \_\_\_\_\_

Contact Person: \_\_\_\_\_

Email Address: \_\_\_\_\_

#### ANALYTICAL CATEGORIES:

Screening or Initial Testing	Method (list)	Number of samples in past year	Confirmation Testing	Method (list)	Number of samples in past year
Blood Alcohol			Blood Alcohol		
Blood drug			Blood Drug		
Urine Drug			Urine Drug		
Post Mortem			Post Mortem		
Reference Lab Samples			Reference Lab Samples		

- Laboratories referring specimens to ABFT accredited laboratories must include documentation to show proof of accreditation status with this application, or must send samples to laboratories certified by the Department.
- For each new director, supervisor and analyst, a current Curriculum Vitae (CV) must be submitted with this application.
- This information is a true and accurate representation of the methods and personnel employed by this laboratory on the date of this application.

\_\_\_\_\_  
(Signature of Laboratory Director)

\_\_\_\_\_  
(Date)



1181

~~APPENDIX C—DUI and DUID Forensic Toxicology Laboratory Certification Standards~~**APPENDIX C****DUI and DUID Forensic Toxicology Laboratory Certification Standards****Laboratory Name:** \_\_\_\_\_

Inspector(s) Name: \_\_\_\_\_ Date of inspection: \_\_\_\_\_

Laboratory Staff interviewed: \_\_\_\_\_

**A. PERSONNEL**

1. Y    N    NA Does the laboratory have a director?
2. Y    N    NA Is the Laboratory Director: board certified in clinical pathology by the American Board of Pathology; certified as a Diplomate by the American Board of Forensic Toxicology (ABFT); or alternatively, have a doctoral degree in one of the natural sciences and at least three years of full-time laboratory experience in forensic toxicology; or a master's degree in one of the natural sciences and at least four years of full-time experience in forensic toxicology; or a bachelor's degree in one of the natural sciences and at least five years full-time experience in forensic toxicology?
3. Y    N    NA Does the Laboratory Director supervise and maintain documentation that the established protocols of the laboratory are being followed and monitored on an ongoing basis to ensure compliance?
4. Y    N    NA If the Laboratory Director does not supervise and maintain documentation that the established protocols of the laboratory are being followed and monitored on an ongoing basis to ensure compliance, has this responsibility been delegated in writing to a qualified Supervisory Analyst?
5. Y    N    NA Does the Supervisory Analyst have at minimum, a bachelor's degree in one of the natural sciences and either three years full-time experience performing forensic toxicology testing or 3 years experience in analytical toxicology and 1 year experience in forensic toxicology?
6. Y    N    NA Does the Supervisory Analyst supervise the testing analyst(s) and maintain documentation that the established functions of the laboratory are being followed and monitored on an ongoing basis to ensure compliance?
7. Y    N    NA Do the Testing Analysts have at minimum an associate degree in a laboratory science or one year training in a nationally recognized accredited laboratory program and one year documented on the job laboratory experience?
8. Y    N    NA Does the Laboratory Director or designated Supervisory Analyst ensure policies and procedures to assess the competency of Testing Analyst(s) are established, followed and documented?
9. Y    N    NA Is competency assessment performed and documented on new analysts prior to reporting results; on existing analysts on an ongoing basis; and on all analysts when a method or instrumentation is added or modified by the laboratory prior to reporting subject results? Is the competency assessment and documentation consistent with the laboratory's written training policies and procedures?

1182



10. Y N NA Does the laboratory maintain documentation of education, training, and experience for the Director and all analysts'?
11. Y N NA Does each laboratory position have a written job description.

**B. STANDARD OPERATING PROCEDURE MANUAL**

1. Y N NA Does the laboratory have a written procedure manual for the performance of all methods of analytes it reports available for testing analysts to follow at all times?
2. Y N NA Has the current Laboratory Director approved signed and dated each procedure?
3. Y N NA Has the Laboratory Director approved initialed and dated each change or revision to the procedure?
4. Does the Standard Operating Procedure (SOP) manual include the following criteria and processes for laboratory personnel to follow?
- Y N NA a) Specimen receiving?
- Y N NA b) Specimen accessioning?
- Y N NA c) Specimen storage?
- Y N NA d) Identifying and rejecting unacceptable specimens?
- Y N NA e) Recording and reporting discrepancies?
- Y N NA f) Security of specimens, aliquots and/or extracts and records?
- Y N NA g) Validating a new or revised method prior to testing specimen to include: accuracy, precision, analytical sensitivity, analytical specificity (interferences), limit of detection (LOD), limit of quantitation (LOQ) and verification of the reportable range?
- Y N NA h) Aliquoting specimen to avoid contamination and/or carry-over?
- Y N NA i) Sample retention to assure stability for one year?
- Y N NA j) Disposal of specimens?
- Y N NA k) The theory and principles behind each assay?
- Y N NA l) Preparation and identification of reagents, standards, calibrators and controls? How does the laboratory ensure all standards are traceable to NIST as specified in Section D?
- Y N NA m) Special requirements and safety precautions involved in performing assays?
- Y N NA n) Frequency and number of control and calibration materials?
- Y N NA o) Recording and reporting assay results?
- Y N NA p) Protocol and criteria for accepting or rejecting analytical data?
- Y N NA q) Procedure to verify the accuracy of the final report?
- Y N NA r) Pertinent literature references for each method?
- Y N NA s) Current step-by-step instructions with sufficient detail to perform the assay to include equipment operation and any abbreviated versions used by the testing analyst(s)?
- Y N NA t) Acceptability criteria for the results of calibration standards and controls as well as between two aliquots or columns.
- Y N NA u) A documented system for reviewing the results of testing calibrators, controls, standards, and subject tests results, as well as reviewing for clerical errors, analytical errors and any unusual analytical results? Are corrective actions implemented and documented, and does the laboratory contact the requesting entity?
- Y N NA v) Policies and procedures to follow when specimens are requested for referral and testing by another certified laboratory?

5. Y N NA Does the laboratory maintain copies of previous standard operating procedures and the dates they were in effect for a minimum of 5 years from the date last used?

**C. PROFICIENCY TESTING**

1. Y N NA Has the laboratory successfully participated in approved proficiency test (PT) programs for the categories in which they are seeking certification?
2. Y N NA Does the laboratory participate in additional proficiency testing programs other than those required under these standards?

Identify PT Program(s) and Results:

---



---



---

3. Y N NA Does the laboratory analyze PT samples using the same procedures with the same number of replicate analyses, standards, Testing Analysts and equipment as used for subject testing?
4. Y N NA Has the laboratory director and all testing analysts participating in the PT challenge signed the corresponding attestation statements?
5. Y N NA Effective April 1, 2009, does the laboratory maintain a copy of all records and documentation in a litigation packet format as defined in Part 1.5 of these rules, for a minimum of 5 years from the date of the proficiency testing event?
6. Y N NA Has the Laboratory Director reviewed and evaluated all PT results?
7. Y N NA Has the laboratory notified and provided corrective action documentation to the Department for approval within 15 calendar days of receipt of unsatisfactory PT results (less than 100% for blood alcohol and less than 80% for urine and blood drugs)?
8. Y N NA Has the laboratory taken and documented remedial action when a score of less than 100% is achieved during a drug PT event to include any false negative results and quantitative results scored "Unacceptable" by the PT provider ( $\pm 2SD$  or 30% from the mean, whichever is greater)?
9. Y N NA Does the laboratory only report those analytes that are included on the master list of analytes for each PT program in which they participate? If the laboratory reports analytes other than those included in the PT program, do they have documented activities performed to ensure the accuracy of those analytes?

**D. QUALITY ASSURANCE AND QUALITY CONTROL**

1. Y N NA Are there records of instrument preventive maintenance, repair, troubleshooting and corrective actions?
2. Y N NA Does the laboratory check and document the accuracy of automatic and/or adjustable pipettes and other measuring devices when placed into service and annually thereafter?
3. Y N NA Does the laboratory clean, maintain and calibrate as needed the analytical balances and in addition, verify the performance of the balance annually using certified weights to include three or more weights bracketing the ranges of measurement used by the laboratory?
4. Y N NA Does the laboratory annually verify and document the accuracy of thermometers using a reference thermometer?

5.	Y	N	NA	Does the laboratory record temperatures on all equipment when in use where temperature control is specified in SOP's, such as water baths, heating blocks, incubators, ovens, refrigerators, and freezers?
6.	Y	N	NA	Does the laboratory properly label reagents as to the identity, the concentration, date of preparation, storage conditions, lot number tracking, expiration date and the identity of the preparer?
7.	Y	N	NA	If the laboratory prepares its own calibrators and controls, are these made using independently prepared stock drug solutions? How does the laboratory ensure and document agreement with NIST-traceable standards within 5%?
8.	Y	N	NA	Does the laboratory avoid mixing different lots of reagents in the same analytical run?
9.	Y	N	NA	Does the laboratory perform and document a calibration curve with each analysis (that has a correlation coefficient of 0.99 or greater for blood alcohol and 0.98 or greater for blood and urine drugs) using at least three calibrators throughout the reporting range?
10.	Y	N	NA	If the laboratory uses historical calibration data for an assay, has the linearity and precision of the curve been demonstrated and documented over time? In addition to a negative control, are 3 levels of controls, at minimum, analyzed with each analytical run to verify the entire calibration curve with two controls bracketing all results reported?
11.	Y	N	NA	For qualitative analyses, does the laboratory analyze, at minimum, a negative and a positive control with each batch of samples analyzed?
12.	Y	N	NA	For quantitative analyses, does the laboratory analyze, at minimum, a negative and two levels of controls that challenge the linearity of the entire curve?
13.	Y	N	NA	Does the laboratory use control material(s) that differs in either source or, lot number, or concentration from the calibration material used with each analytical run?
14.	Y	N	NA	For multi-analyte assays, does the laboratory perform and document calibration curves and controls specific to each analyte, or at minimum, one with similar chemical properties as reported in the batch?
15.	Y	N	NA	Does the laboratory analyze at least one commercially prepared control that is NIST-traceable and within (10% for ethanol and 20% for blood and urine drugs) the stated assayed value with each analytic run?
16.	Y	N	NA	Does the laboratory analyze an appropriate matrix blank and control with each analytical run, when available?
17.	Y	N	NA	Does the laboratory analyze calibrators and controls in the same manner as unknowns?
18.	Y	N	NA	Does the laboratory define ACCEPTABILITY criteria for calibration standards and controls for all assays?
19.	Y	N	NA	Does the laboratory monitor and document the performance of calibrator and control materials on an ongoing basis to ensure performance does not exceed the laboratory's established criteria of acceptability?
20.	Y	N	NA	Does the laboratory have written criteria to follow when corrective action is required for unacceptable calibration, control, and standard or instrument performance?
21.	Y	N	NA	Does the laboratory document the corrective actions taken when an unacceptable calibration, control, standard, or other reagent result exceeds the laboratory's criteria of acceptability?
22.	Y	N	NA	Are corrective actions documented and reviewed by the Laboratory Director or designated Supervisory Analyst on an ongoing basis to ensure the effectiveness of the actions taken?



- 23.Y N NA Does the laboratory maintain records of validation data for any new or modified methods to include; accuracy, precision, analytical specificity (interferences), limit of detection (LOD), limits of quantitation (LOQ) and verification of the linear range?
- 24.Y N NA Are analytical methods developed by the laboratory such that screening and confirmation testing can be completed on no more than 5 mL of sample volume?
- 25.Y N NA Does the analyst follow the SOP for the tests performed?

#### E. CHAIN OF CUSTODY-SECURITY-SPECIMEN RETENTION-FACILITY SPACE

1. Y N NA Is there a system to document the complete chain of custody of all forensic specimens from receipt to disposal?
2. Y N NA Does the laboratory issue instructions to user agencies that include the requirements for specimen types(s), identification and volume?
3. Y N NA Does the laboratory document the condition of the external package and individual evidence seals?
4. Y N NA Does the laboratory compare the evidence seals against the corresponding requisition and document any discrepancies? How are discrepancies resolved?
5. Y N NA Does the laboratory document the condition of the specimens at the time of receipt?
6. Y N NA Does the laboratory document all persons handling the original specimens, aliquots, and extracts?
7. Y N NA Does the laboratory document all transfers of specimens, aliquots, and extracts sent to another certified laboratory whenever requested by the defendant's legal counsel?
8. Y N NA Does the laboratory maintain a current list of authorized personnel?
9. Y N NA Does the laboratory restrict entry into the laboratory only to authorized personnel?
- 10.Y N NA Does the laboratory have provisions for securing the laboratory during non-working hours?
- 11.Y N NA Does the laboratory secure short and long-term storage areas when not in use?
- 12.Y N NA Does the laboratory log in and aliquot specimens in a secure area?
- 13.Y N NA Are urine specimens stored for at least 1 year at -20 degrees C or colder?
- 14.Y N NA Are blood specimens stored for at least 1 year at less than 8 degrees C or frozen?
- 15.Y N NA Does the laboratory document the disposal of samples, aliquots, and extracts?
- 16.Y N NA Is there adequate space to perform the analyses?
- 17.Y N NA Are equipment and instrument operating conditions consistent with manufacturer requirements?

#### F. RECORDS—REPORTING

1. Y N NA Are all instrumentation and analysis records maintained by the testing laboratory for a period of not less than 5 years?
2. Y N NA Prior to reporting results, are all specimens that have been identified as positive on an initial screening drug test confirmed using a second analytical procedure using a different chemical principle from the initial screening test when available or as applicable?
3. Y N NA Does the laboratory confirm the identity of an analyte using a different extract of the same specimen than was used for the screening test?
4. Y N NA Prior to reporting results, are all blood ethanol results confirmed using a second GC column where the results from the second column had significant difference in

			retention time and a change in elution order of some of the common volatiles from the column utilized in the initial test?	
5.	Y	N	NA	If blood samples are screened for ethanol by Gas Chromatography, is a separate aliquot from the original specimen used for confirmation? (e.g. two separate aliquots should be tested for blood alcohol)
6.	Y	N	NA	For post mortem testing, does the laboratory confirm the identity of a drug analyte or alcohol concentration using a second column and a different extract from the same sample, or using a different sample matrix from the same subject when possible?
7.	Y	N	NA	Does the laboratory only report quantitative results that are above the lowest concentration of calibrator or standard used in the analytical run?
8.	Y	N	NA	Does the laboratory verify results that are below the lowest concentration of calibrator or standard and above the Limit Of Quantitation (LOQ) by using a blank and a standard that falls below the expected value of the analyte in the sample in duplicate prior to reporting a quantitative result?
9.	Y	N	NA	Does the laboratory qualitatively report results below the lowest concentration of calibrator or standard and above the Limit Of Detection (LOD) as either trace or using a non-specific numerical designation? (e.g. positive but less than 0.5mg/L)
10.	Y	N	NA	Does the laboratory maintain records of testing to include, accession numbers, specimen type, raw data of calibration standards and curves, controls and subject results, final and amended reports, acceptable reference range parameters, identification of analyst and date of analysis for at least 5 years?
11.	Y	N	NA	Does the laboratory adequately document the available external chain of custody information?
12.	Y	N	NA	Does the laboratory's final report contain the name and location of the laboratory, name and unique identifier of subject, submitting agency, sample received date, date of report, type of specimen tested, test result, units of measure, and any other information or qualifiers needed for interpretation when applicable to the test method and results being reported, to include any identified and documented discrepancies.
13.	Y	N	NA	Has the laboratory developed an adequate litigation packet that meets the requirements specified in Part 1.5 of these rules and regulations?

## G. ANALYTICAL PROCESS

### G.1 Gas Chromatography (GC)

1.	Y	N	NA	Does the laboratory document the conditions of the gas chromatograph, including the detector response?
2.	Y	N	NA	Does the laboratory perform and document preventive maintenance as required by the manufacturer?
3.	Y	N	NA	Are the maintenance records readily available to the staff operating the equipment?
4.	Y	N	NA	Does the laboratory document the performance of new columns before use? How?
5.	Y	N	NA	Does the laboratory use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified?
6.	Y	N	NA	Does the laboratory have established criteria of acceptability not to exceed 10% for variances between the results of the blood ethanol analysis using different aliquots and between different columns?

7. Y N NA Does the laboratory document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system?

## G.2 Gas Chromatography Mass Spectrometry (GC/MS)

1. Y N NA Does the laboratory perform and document preventive maintenance as required by the manufacturer?
2. Y N NA Does the laboratory document the changes of septa as specified in the sop?
3. Y N NA Is there documentation of liners being cleaned or replaced as specified in the sop?
4. Y N NA Are the maintenance records readily available to the staff operating the equipment?
5. Y N NA Does the laboratory maintain records of mass spectrometric tuning?
6. Y N NA Does the laboratory have written criteria for an acceptable mass-spectrometric tune?
7. Y N NA If the tune is unacceptable, is corrective action documented?
8. Y N NA Does the laboratory monitor analytic analyses to check for contamination and/or carry-over?
9. Y N NA If the laboratory uses selected ion monitoring within each run does the laboratory compare ion ratios and retention times between calibrators, controls and specimens for identification of an analyte?
10. Y N NA Does the laboratory use an internal standard for qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay?
11. Y N NA Does the laboratory document the monitoring of the response (area or peak height) for the internal standard to ensure consistency overtime of the analytical system?
12. Y N NA Does the laboratory define the criteria for designating qualitative results as positive?
13. Y N NA If the laboratory has written its own software, has it been documented and the accuracy verified?
14. Y N NA If the laboratory uses GC/MS for both screening and confirmation, does the laboratory analyze two aliquots where the second aliquot is tested in a different batch than the original aliquot? if sample volume prohibits the testing of two aliquots, is it noted on the final report that only one aliquot was tested?
15. Y N NA Does the laboratory have written acceptability criteria for variance between the results when the same analyte is quantitated in multiple analyses?
16. Y N NA If the laboratory uses a library match to qualitatively identify an analyte, does the laboratory compare the relative retention time and mass spectra from a known standard or control run on the same system before reporting the results?
17. Y N NA After routine and preventive maintenance (e.g. clipping or replacing the column or cleaning the source) does the laboratory evaluate the performance of the instrument prior to analyzing subject samples? How?

## G.3 Immunoassays

1. Y N NA Does the laboratory perform and document preventive maintenance as required by the manufacturer?
2. Y N NA Are the maintenance records readily available to the staff operating the equipment?



- |    |   |   |    |  |
|----|---|---|----|--|
| 3. | Y | N | NA | If the laboratory tests specimens different from what the manufacturer has approved for the assay, or if the laboratory modified the test method from the manufacturer instructions, has the laboratory validated these changes? |
| 4. | Y | N | NA | Does the laboratory define acceptable separation or measurement units (absorbance intensity or counts per minute) for each assay? Is this consistent with manufacturer instructions, if they exist?                              |

#### G.4 Thin Layer Chromatography

- |    |   |   |    |   |
|----|---|---|----|---|
| 1. | Y | N | NA | Does the laboratory apply unextracted standards to each thin layer chromatographic plate?   |
| 2. | Y | N | NA | Does the laboratory include in their written procedure the preparation of mixed solvent systems, spray reagents and designation of lifetime?                                |
| 3. | Y | N | NA | Does the laboratory include in their written procedure the storage of unused thin layer chromatographic plates? Are desiccators necessary?                                  |
| 4. | Y | N | NA | Does the laboratory evaluate new thin layer chromatographic plates before placing them into service? How does the laboratory establish and document acceptable performance? |
| 5. | Y | N | NA | Does the spotting technique preclude the possibility of contamination and/or carry-over? How is this verified?  |
| 6. | Y | N | NA | Does the laboratory measure all appropriate Rf values for qualitative identification purposes?  |
| 7. | Y | N | NA | If the laboratory uses sequential color reactions, are these recorded?  |
| 8. | Y | N | NA | Does the laboratory maintain records of thin layer chromatographic plates?  |
| 9. | Y | N | NA | Does the laboratory analyze an appropriate matrix blank with each batch of specimens analyzed?  |

#### G.5 High Pressure Liquid Chromatography (HPLC)

- |    |   |   |    |   |
|----|---|---|----|---|
| 1. | Y | N | NA | Does the laboratory perform and document preventive maintenance as required by the manufacturer?  |
| 2. | Y | N | NA | Are the maintenance records readily available to the staff operating the equipment?   |
| 3. | Y | N | NA | Does the laboratory monitor and document the performance of the HPLC instrument each day of testing?  |
| 4. | Y | N | NA | Does the laboratory evaluate the performance of new columns before use? How?  |
| 5. | Y | N | NA | If the laboratory recycles eluting solvents, are there written standards for acceptability?   |
| 6. | Y | N | NA | Does the laboratory use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified when available or appropriate for the assay? |
| 7. | Y | N | NA | Does the laboratory document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system?   |

#### G.6 Liquid Chromatography Mass Spectroscopy (LCMS) (LCMS/MS)

- |    |   |   |    |  |
|----|---|---|----|--|
| 1. | Y | N | NA | Does the laboratory perform and document preventive maintenance as required by the manufacturer? |
| 2. | Y | N | NA | Are the maintenance records readily available to the staff operating the equipment?              |
| 3. | Y | N | NA | Does the laboratory maintain records of mass spectrometric tuning?                               |
| 4. | Y | N | NA | Does the laboratory have written criteria for an acceptable mass-spectrometric tune?             |

- |     |   |   |    |  |
|-----|---|---|----|--|
| 5.  | Y | N | NA | If the tune is unacceptable, is corrective action documented?  |
| 6.  | Y | N | NA | If the laboratory has written its own software, has the accuracy been verified prior to use and has the verification been documented?  |
| 7.  | Y | N | NA | Does the laboratory use an internal standard with each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay? |
| 8.  | Y | N | NA | Does the laboratory document the monitoring of the response (area or peak height) of the internal standard to ensure consistency over time of the analytical system?   |
| 9.  | Y | N | NA | Within each run, does the laboratory compare two transitions and retention times between calibrators, controls and specimens?  |
| 12. | Y | N | NA | Does the laboratory document and maintain records when changes in source, source conditions, eluent, or column are made to the instrument.   |
| 13. | Y | N | NA | Does the laboratory evaluate the performance of the instrument when changes in: source, source conditions, eluent, or column are made prior to reporting test results? How?  |

COMMENTS SECTION:

[illegible]

1190

1191

1192



**COLORADO**

Board of Health

Department of Public Health &amp; Environment

# Notice of Public Rule-Making Hearing

December 19, 2018

ID #: 125

NOTICE is hereby given pursuant to the provisions of §24-4-103, C.R.S.; that the Colorado Board of Health will conduct a public rule-making hearing on:

**Date:** December 19, 2018**Time:** 10:00 AM**Place:** Sabin-Cleere Conference Room, Building A, 1st Floor, 4300 Cherry Creek Drive South, Denver, CO 80246

To consider the promulgation/amendments or repeal of:

**CCR Number(s)**

5 CCR 1005-2, Testing for Alcohol and Other Drugs

The proposed rules have been developed by the following division or office of the Colorado Department of Public Health and Environment:

Laboratory Services

Statute(s) that requires or authorizes the Board of Health to promulgate, amend, or repeal this rule:

**Statute(s)**

§42-4-1304, C.R.S.

§42-4-1301.1, C.R.S.

**Agenda and Hearing Documents**

The Board of Health agenda and the proposed rules, together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis will be available, at least seven (7) days prior to the meeting, on the Board's website, <https://colorado.gov/cdphe/boh>.

For specific questions regarding the proposed rules, contact the division below:

Laboratory Services Division, 8100 Lowry Blvd., Denver, CO 80230, (303) 692-3681.

**Participation**

The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to three minutes or less depending on the number of persons wishing to comment.

**Written Testimony**

Pursuant to 6 CCR 1014-8, §3.02.1, written testimony must be submitted no later than five (5) calendar days prior to the rule-making hearing.

Persons wishing to submit written comments should submit them to: Colorado Board of Health, ATTN: Board of Health Unit, Program Assistant, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: [cdphe.bohrequests@state.co.us](mailto:cdphe.bohrequests@state.co.us)

**Written testimony is due by 5:00 p.m., Thursday, December 13, 2018.****Admin**

Deborah Nelson, Board of Health Administrator

Date: 2018-10-22T12:03:57



# Notice of Proposed Rulemaking

**Tracking number**

2018-00601

**Department**

1000 - Department of Public Health and Environment

**Agency**

1005 - Laboratory Services Division

**CCR number**

5 CCR 1005-4

**Rule title**

NEWBORN SCREENING AND SECOND NEWBORN SCREENING

**Rulemaking Hearing****Date**

12/19/2018

**Time**

10:00 AM

**Location**

4300 Cherry Creek Drive South, Denver, CO 80246

**Subjects and issues involved**

The Executive Director Rulemaking is proposing to transfer the second newborn screening rules promulgated by the Executive Director to the Board of Health. To transfer the rules, the Executive Director will repeal the Executive Director rules and the Board of Health will entertain adopting the rules. Rulemaking is necessary because HB 18-1006 transferred rulemaking authority for second newborn screening from the Executive Director to the Board of Health, see Section 25-4-1004, C.R.S. and Section 25-4-1004.5 C.R.S.

**Statutory authority**

Section 25-4-1004, C.R.S. and Section 25-4-1004.5 C.R.S.

**Contact information****Name**

Darren Michael

**Title**

Newborn Screening Program Manager

**Telephone**

303-692-3673

**Email**

darren.michael@state.co.us



**COLORADO**  
Department of Public  
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

To: Members of the State Board of Health

From: Dr. Darren Michael, Newborn Screening Program Manager, Laboratory Services Division

Through: Randy Kuykendall, *RK*  
Interim Administrative Director, Laboratory Services Division

Date: October 18, 2018

Subject: **Request for Rulemaking Hearing**  
Proposed Amendments to 5 CCR 1005-4, *Newborn Screening and Second Newborn Screening* with a request for a rulemaking hearing to be set for December 19, 2018

---

In preparation for a Public Rulemaking Hearing, please find copies of the following documents:

- a) Proposed Amendments to 5 CCR 1005-4,
- b) Statement of Basis and Purpose and Specific Statutory Authority,
- c) Regulatory Analysis, and
- d) Early Stakeholder Engagement

As summarized in the fiscal note for HB 18-1006:

When an infant is born in Colorado, the two blood samples are collected and forwarded to the CDPHE, which tests for 37 rare genetic and metabolic conditions. The first sample is taken by the hospital, birthing facility, or midwife within 48 hours of birth; the second sample is collected by the infant's pediatrician approximately 8 to 14 days after birth [for certain conditions identified in the rules]. In the event of a positive result, a specialist on the condition reaches out to the family of the infant to arrange for follow-up services and/or additional testing.

At present, the *Newborn Screening and Second Newborn Screening* rules perform the following functions:

- a) Define key terms,
- b) Establish procedures for the collection and submission of blood spot specimens for testing,
- c) Establish procedures for testing of specimens and reporting of results,
- d) Establish requirements for quality control and education, and
- e) List conditions covered by the initial and second newborn screening panels.

While the overall set of rules is titled "Newborn Screening and Second Newborn Screening," there are two sub-sections titled "Newborn Screening Regulations" and "Implementation of Second Newborn Screening." Together, these definitions, procedures and requirements establish roles and responsibilities, as well as best practices, for the metabolic testing portion of Colorado's Newborn Screening Program. The majority of the rule is promulgated through

the State Board of Health; however, the Executive Director had rulemaking authority over aspects of second newborn screening.

Recent legislation (House Bill 18-1006, *Infant Newborn Screening*) updated and expanded the statutes related to newborn screening in Colorado. Though the statutes were reorganized, the rulemaking authority that serves as the basis for the current rules is largely unchanged.

*Section 25-4-1004(3), C.R.S. states:*

The state board shall promulgate rules concerning the requirements of the newborn screening program for genetic and metabolic disorders, including: (i) in addition to those conditions listed in subsection (1)(b) Of this section, any other conditions for which testing must occur; (ii) obtaining samples or specimens from newborn infants required for the tests prescribed by the state board; and (iii) the handling and delivery of samples or specimens for testing and examination.

Board of Health authority to promulgate rules that identify which conditions will require a second screening is unchanged, Section 25-4-1004.5(3)(a), C.R.S. However, HB 18-1006 transferred the Executive Director's rulemaking authority to establish the standards for second specimen testing to the Board of Health. Section 25-4-1004.5(3)(b), C.R.S. now reads:

The state board [of health] is authorized to promulgate rules and standards for the implementation of the second specimen testing specified in this subsection (3), including: (I) Identification of those conditions for which a second specimen shall be required; (II) The age of the infant at which the second screening may be administered; (III) The method by which the parent or parents of a newborn shall be advised of the necessity for a second specimen test; (IV) The procedure to be followed in administering the second specimen test; (V) Any exceptions to the necessity for a second specimen test and the procedures to be followed in such cases; and (VI) The standards of supervision and quality control that shall apply to second specimen testing.

Though the rulemaking authority has changed, the rulemaking authorization is substantively the same. To effectuate the change the Department requests the Executive Director repeal the Executive Director rules and that the Board of Health adopt the second newborn screening rules as modified herein.

HB 18-1006 also expanded the Board of Health's rulemaking authority to include follow-up services. Section 25-4-1005.4(2)(c), C.R.S., states:

The state board [of health] shall promulgate rules to establish and maintain appropriate follow-up services on positive screen cases in order that measures may be taken to prevent death or intellectual or other permanent disabilities. The follow-up services must include [i] identification of newborns at risk for genetic conditions, [ii] coordination among medical providers and families, [iii] connecting newborns who screen positive to timely intervention and appropriate referrals to specialists for follow-up and diagnostic testing, and [iv] additional duties as determined by the [Colorado Department of Public Health and Environment]. (Numbering, in the form of [i]-[iv], has been added to statutory text to aid with analysis.)

The proposed revisions implement this new directive.

Last, the proposed revisions implement the results of the Department's regulatory efficiency review that occurred pursuant to E.O. D 12-002 and Section 24-4-103.3, C.R.S. This includes updates to align with current statutory language and statutory citations.

The proposed revisions do not address the newborn hearing screening rulemaking requirements in HB 18-1006. These rules are being developed by the Department's Center for Health and Environmental Data. It is anticipated that these will come to the Board of Health in early 2019.

This rulemaking does not add new conditions or modify the list of conditions on the panel.

STATEMENT OF BASIS AND PURPOSE  
AND SPECIFIC STATUTORY AUTHORITY  
for Repeal of Executive Director Second Newborn Screening Rules  
and Amendments to  
5 CCR 1005-4, Newborn Screening and Second Newborn Screening

Basis and Purpose.

The *Newborn Screening and Second Newborn Screening* rules perform the following functions:

- a) Define key terms,
- b) Establish procedures for the collection and submission of blood spot specimens for testing,
- c) Establish procedures for testing of specimens and reporting of results,
- d) Establish requirements for quality control and education, and
- e) List conditions covered by the initial and second newborn screening panels.

Together, these definitions, procedures and requirements establish roles and responsibilities, for the genetic and metabolic testing portion of Colorado's Newborn Screening Program.

The following changes to the rules are being proposed:

- 1) The Department proposes several modifications and additions to definitions in Section 1.2 of the rules. The new definitions of "Named Submitter" and "Birthing Facility" clarify roles and responsibilities, and align with new statutory language. The new definition of "Exceptional Circumstances" acknowledges situations, such as refugee populations, where timely collection may be challenging. It is current practice for the Department to accept specimens from children up to 365 days of life when the child can still benefit from screening. "Newborn" has been defined using guidance from the World Health Organization. Several definitions such as "Screen Negative," "Screen Positive," "Urgent Screen Positive," "Non-urgent Screen Positive Result," "Time-Critical Condition," and "Time-Sensitive Condition" are taken from or adapted from the cited Clinical and Laboratory Standards Institute document (1) or the cited position statement by the Society for Inherited Metabolic Disorders (4). "Follow up" is also defined as described below in item 4b.
- 2) Quality control and education standards are communicated in the current *Newborn Screening Regulations and Implementation of Second Newborn Screening sections*. Upon review of the statutory authorization for rulemaking, this language has been removed as the statute does not require or authorize board of health rules directing the Department to provide quality assurance plans and education. Under the Executive Director's administrative responsibilities, quality control and information about the programs is required pursuant to Section 25-4-1003(2)(a) and (f), C.R.S. The Executive Director is authorized to promulgate rules; however, the Department determined that rules are not required as this activity can be managed administratively. Though removed from the rule when repealing the Executive Director rules, the Department's quality assurance and educational activities will continue.

Section 25-4-1004.5(3), C.R.S., does require the Board of Health to promulgate rules governing supervision and quality control standards for second specimen testing.

- 3) The substantive changes to Section 3 include new language to support the collection of a second newborn screening specimen at newborn well child visit. The term ‘newborn well child’ visit is used widely by the pediatric community, which is the intended audience for this rule. Also, the term ‘post partum’ was removed to avoid confusion for obstetrics and gynecology physicians, who typically see mothers approximately six weeks after delivery.
- 4) Section 4 of the proposed rule is written to reflect recent changes to statute through House Bill 18-1006.
  - a. The rules now clarify that the state newborn screening laboratory operates six days per week, as required by statute.
  - b. Definitions and requirements related to follow-up services are now included. Section 25-4-1004.5(2)(c), C.R.S. states,

The state board [of health] shall promulgate rules to establish and maintain appropriate follow-up services on positive screen cases in order that measures may be taken to prevent death or intellectual or other permanent disabilities. The follow-up services must include [i] identification of newborns at risk for genetic conditions, [ii] coordination among medical providers and families, [iii] connecting newborns who screen positive to timely intervention and appropriate referrals to specialists for follow-up and diagnostic testing, and [iv] additional duties as determined by the [Colorado Department of Public Health and Environment]. (Numbering, in the form of [i]-[iv], has been added to statutory text to aid with analysis.)

To implement HB 18-1006, the proposed rule establishes follow-up services for any positive screen result. The Department needs to manage false-positives and thus, the rule recognizes that the department may require repeat or confirmatory testing prior to initiating referral services. The proposed rule then establishes the time frame in which follow-up services may occur.

The Department acknowledges that Newborn Screening is one of many services Colorado provides. Services offered through the Colorado Department of Human Services or the Department of Health Care Policy and Financing, such as early intervention services and services for individuals with intellectual or developmental disabilities may apply. These programs and their service providers may also be of assistance to these newborns and their families. The statute references medical providers and specialists so at this time the proposed language focuses on health care services. Through implementation and on-going monitoring, the department will consider if follow-up services can and should include services offered through our sister agencies.



Also note that the on-going monitoring is not included in the definition of follow-up services. Monitoring in the proposed rule is limited to evaluation of the newborn screening program. Other programs such as the Colorado Department of Public Health and Environment's Colorado Responds to Children with Special Needs (CRCSN), the state birth defects registry, monitor information on children diagnosed with conditions in the newborn screen. CRCSN is authorized to conduct population-level health surveillance, including relevant medical record review and examination of risk factors, up to age 3, on cases with these conditions and other birth defects, pursuant to C.R.S. 25-1.5-101 - 25-1.5-105, C.R.S. 25 - 1- 122 and Board of Health Regulations, 6 CCR-1009-7 (State of Colorado Rules and Regulations Pertaining to the Detection, Monitoring, and Investigation of Environmental and Chronic Diseases). Public health monitoring or population health surveillance involves the ongoing collection, analysis, and dissemination of health data to prevent and control disease and injury in a community, as defined by the Centers for Disease Control and Prevention (CDC). In addition to these health surveillance activities, CRCSN also provides parents with information on community resources for their children. It is an unnecessary duplication and expense to extend newborn screening monitoring beyond what is needed to perform effective screening and follow-up services.

To the extent to which the Department performs these services through a contractor, the contract will comport with the Procurement Code, State Fiscal and Personnel rules, and Department policies governing contract monitoring, privacy and data use. As written the proposed rule requires referral services in all screen positive cases as this is directed by the statute.

- 5) Statutory citations, terminology, clarifying edits and formatting to improve readability are proposed throughout the rule. The terms mother and father and replace them gender neutral terms "parent(s)" and "legal guardian(s)."

This rulemaking does not propose new conditions or otherwise modify the current list of conditions included on the newborn screening or second newborn screening panel. The specific criteria to be used by the Board of Health for evaluating new disorders for inclusion in newborn screening are stated in statute, C.R.S. 25-4-1004(1)(c) is unchanged. Pursuant to Section 25-4-1004(1), C.R.S., the Board of Health criteria for adding additional conditions remain:

- (I) The condition for which the test is designed presents a significant danger to the health of the infant or his family and is amenable to treatment;
- (II) The incidence of the condition is sufficiently high to warrant screening;
- (III) The test meets commonly accepted clinical standards of reliability, as demonstrated through research or use in another state or jurisdiction; and
- (IV) The cost-benefit consequences of screening are acceptable within the context of the total newborn screening program.

HB 18-1006 authorized the Department to take preliminary steps such as a space study and cost assessment to determine the viability of adding new conditions. These actions are occurring. In addition, as previously directed by the Board of Health, the Department is developing a methodology that the Department will use to determine whether it should recommend a condition be added. The proposed revisions in this rule establish the structure that will inform that analysis. The proposed rules are predicated on a determination that screening is appropriate based upon state statute or Board of Health rules.

Specific Statutory Authority.

These rules are promulgated pursuant to the following statutes: Sections 25-4-1004 and 25-4-1004.5, C.R.S.

---

#### SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

☒ Yes in part, the bill number is HB18-1006. Rules are ☐ authorized  
☒ required.  
☐ No

Does this rulemaking incorporate materials by reference?

☐ Yes ☐ URL or ☐ Sent to State Publications Library  
☒ No

Does this rulemaking create or modify fines or fees?

☐ Yes  
☒ No

Does the proposed rule create (or increase) a state mandate on local government?

- ☒ No. This rule does not require a local government to perform or increase a specific activity for which the local government will not be reimbursed.
- ☐ No. This rulemaking reduces or eliminates a state mandate on local government.
- ☐ Yes. This rule includes a new state mandate or increases the level of service required to comply with an existing state mandate, and local government will not be reimbursed for the costs associated with the new mandate or increase in service.

The state mandate is categorized as:

- ☐ Necessitated by federal law, state law, or a court order  
☐ Caused by the State's participation in an optional federal program  
☐ Imposed by the sole discretion of a Department  
☐ Other: \_\_\_\_\_

Has an elected official or other representatives of local governments disagreed with this categorization of the mandate? ☐ Yes ☐ No

If yes, please explain why there is disagreement in the categorization.

Please elaborate as to why a rule that contains a state mandate on local government is necessary. NA

REGULATORY ANALYSIS  
for Repeal of Executive Director Second Newborn Screening Rules  
and Amendments to  
5 CCR 1005-4, Newborn Screening and Second Newborn Screening

1. A description of the classes of persons affected by the proposed rule, including the classes that will bear the costs and the classes that will benefit from the proposed rule.

These rules impact Birthing Facilities, Midwives, Reference Laboratories (e.g. Quest, LabCorp), Pediatrician's Offices, Family Medicine Offices, Clinical Specialists currently contracted with CDPHE to provide follow-up services (~20), Patient Advocacy Groups (e.g. March of Dimes, Cure SMA, etc.), Adult Patients with Rare Congenital Disorders, Colorado's Newborns (~67,000/yr), and Parents/Families of Colorado's Newborns

- A. Identify each group of individuals/entities that rely on the rule to maintain their own businesses, agencies or operation, and the size of the group:

Birthing Facilities, Midwives, Reference Laboratories (e.g. Quest, LabCorp), Pediatrician's Offices, Family Medicine Offices.

- B. Identify each group of individuals/entities interested in the outcomes the rule and those identified in #1.A achieve, and if applicable, the size of the group:

Clinical Specialists currently contracted with CDPHE to provide follow-up services (~20), Patient Advocacy Groups (e.g. March of Dimes, Cure SMA, etc.), Adult Patients with Rare Congenital Disorders

- C. Identify each group of individuals/Entities that benefit from, may be harmed by or at-risk because of the rule, and if applicable, the size of the group:

Colorado's Newborns (~67,000), Parents/Families of Colorado's Newborns

2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

- A. For those that rely on the rule to maintain their own businesses, agencies or operations:

Describe the anticipated favorable and non-favorable non-economic outcomes (short-term and long-term), and if known, the likelihood of the outcomes:

The proposed rules modernize the metabolic portion of the newborn screening program. The majority of changes are clarifying and updates to align with the current statute and the current operation of the Colorado Newborn Screening Program.

Prior to HB 18-1006, the Newborn Genetics Cash Fund balance was \$6.3 million. Through HB 18-1006, the General Assembly authorized the Department to increase the current fee from \$92 to \$111.00. The fee adjustment increases the newborn screening portion of the Newborn Genetics Cash Fund by \$1.3 million (The legislation also authorized additional funding for newborn hearing screening; however, that is not included in this rule.) We do not envision any increase in costs for stakeholders. The fee increase supports the newborn screening program generally and funds the activities delineated in HB 18-1006.

The fee increase will support the follow-up services provided by the Department or its designee.

Favorable non-economic outcomes:

Timely screening and follow-up services that bridge the birth to pediatric services benefit the medical providers involved. Pediatricians benefit directly from the follow-up services covered by the newborn screening program, as these services provide immediate access to expert medical advice for families and primary care physicians of affected children.

Unfavorable non-economic outcomes: None expected.

Anticipated financial impact:

Anticipated Costs:	Anticipated Benefits:
<p>Description of costs that must be incurred.</p> <p>None expected.</p> <p>Description of costs that may be incurred.</p> <p>None expected.</p>	<p>Description of financial benefit.</p> <ul style="list-style-type: none"> <li>To the extent clarifying the language improves provider practice and error rates, a cost and times saving may occur.</li> </ul>
<p>Cost or cost range.</p> <p>\$_____None_____ or</p> <p>___ No data available.</p>	<p>Savings or range of savings.</p> <p>\$_____ or</p> <p>_X_ No data available.</p>
<p>Dollar amounts that have not been captured and why: NA</p>	<p>Dollar amounts that have not been captured and why: NA</p>

Local Government Impact: NA

Statement from HB 18-1006 Fiscal Note:

HB 18-1006 authorized the Department to increase the fee to improve the newborn screening program, including follow-up services. An additional \$1.3 million will be generated.

- B. For those that are affected by or interested in the outcomes the rule and those identified in #1.A achieve.

Describe the favorable or unfavorable outcomes (short-term and long-term), and if known, the likelihood of the outcomes:

The proposed rules modernize the metabolic portion of the newborn screening program. The majority of changes are clarifying and updates to align with the current statute and the current operation of the Colorado Newborn Screening Program.

Favorable non-economic outcomes:

Clarifying the existing processes and establishing the standards for follow-up services is of interest to entities that may serve as the Department's designee and organizations that advocate for patients and families.

Unfavorable non-economic outcomes: None expected.

Any anticipated financial costs monitored by these individuals/entities?

The Department has reviewed the language for feasibility and policy direction but there are no anticipated cost increases.

Any anticipated financial benefits monitored by these individuals/entities?

Greater operational efficiency of the metabolic portion of the newborn screening program might lower costs for these individuals due to less wasted activity, e.g. fewer requests tied to unsatisfactory specimens.

- C. For those that benefit from, are harmed by or are at risk because of the rule, the services provided by individuals identified in #1.A, and if applicable, the stakeholders or partners identified in #1.B.

Describe the favorable or unfavorable outcomes (short-term and long-term), and if known, the likelihood of the outcomes:

By defining follow-up in rule, the department is providing clarity about the boundary between newborn screening services and traditional medical services. These rules help to explain the reporting of results according to whether the results are screen negative, non-urgent screen positive, or urgent screen positive results and ensure timely processing for newborns and their families.

Financial costs to these individuals/entities:

No new costs are expected for these entities and individuals.

Financial benefits to or cost avoidance for these individuals/entities:

Pediatricians benefit directly from the follow-up contracts covered by the newborn screening program, as these contracts provide immediate access to expert medical advice for families and primary care physicians of affected children.

3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.
- A. Anticipated CDPHE personal services, operating costs or other expenditures:

The newborn screening program statutory mandates are better resourced with the increased appropriation. The rule elaborates and establishes standards related to those mandates; the rule does not drive additional costs.

The newborn screening fee was increased from \$92/child to \$111/child on July 1, 2018. This was the first fee increase in seven fiscal years. The fee is not established by the Board of Health, but is set administratively through the Executive Director. This

rulemaking does not include fees or fee increases. The Department will continue to monitor the fee as it evaluates the programmatic infrastructure and costs associated with improving or expanding the services offered.

- B. Anticipated personal services, operating costs or other expenditures by another state agency:

The fiscal note to HB 18-1006 acknowledged that the Department of Health Care Policy and Financing will have costs associated with increased capitation payments (FY19 \$117,900; FY20 \$123,200; FY21 \$139,300) for Medicaid and the Children's Basic Health Plan (CHP+).

It was not anticipated that HB 18-1006 would increase the number of Colorado infants identified as persons with an intellectual or developmental disability and thus, no additional costs were identified in this area.

Anticipated Revenues for another state agency:

These costs are funded through a variety of funding streams and are to be addressed through the annual budget process.

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Check mark all that apply:

- ☒ Inaction is not an option because the statute requires rules be promulgated.
- ☒ The proposed revisions are necessary to comply with federal or state statutory mandates, federal or state regulations, and department funding obligations.
- ☒ The proposed revisions appropriately maintain alignment with other states or national standards.
- ☒ The proposed revisions implement a Regulatory Efficiency Review (rule review) result, or improve public and environmental health practice .
- ☒ The proposed revisions implement stakeholder feedback.
- ☒ The proposed revisions advance the following CDPHE Strategic Plan priorities:

Goal 1, Implement public health and environmental priorities  
 Goal 2, Increase Efficiency, Effectiveness and Elegance  
 Goal 3, Improve Employee Engagement  
 Goal 4, Promote health equity and environmental justice  
 Goal 5, Prepare and respond to emerging issues, and  
 Comply with statutory mandates and funding obligations

Strategies to support these goals:

- ☐ Substance Abuse (Goal 1)
- ☐ Mental Health (Goal 1, 2, 3 and 4)
- ☐ Obesity (Goal 1)
- ☐ Immunization (Goal 1)
- ☐ Air Quality (Goal 1)
- ☐ Water Quality (Goal 1)
- ☒ Data collection and dissemination (Goal 1, 2, 3, 4 and 5)
- ☐ Implements quality improvement or a quality improvement project (Goal 1, 2, 3 and 5)

- \_\_\_ Employee Engagement (career growth, recognition, worksite wellness) (Goal 1, 2 and 3)
- \_\_\_ Incorporate health equity and environmental justice into decision-making (Goal 1, 3 and 4)
- \_\_\_ Establish infrastructure to detect, prepare and respond to emerging issues (Goal 1, 2, 3, 4, and 5)

\_\_\_ Other favorable and unfavorable consequences of inaction:

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

Rulemaking is proposed when it is the least costly method or the only statutorily allowable method for achieving the purpose of the statute. The specific revisions proposed in this rulemaking were developed in conjunction with stakeholders. The benefits, risks and costs of these proposed revisions were compared to the costs and benefits of other options. The proposed revisions provide the most benefit for the least amount of cost, are the minimum necessary or are the most feasible manner to achieve compliance with statute. The proposed rules for follow-up services afford the Department some discretion in designing and managing those services.

6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.

See the responses at #4 and #5 above.

7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.

The program's laboratory information management system was used to estimate the number of newborns screened by the program.

The Department solicited feedback at all six of the current follow-up clinics (hemoglobinopathies, congenital hypothyroidism, congenital adrenal hyperplasia, cystic fibrosis, severe combined immunodeficiency, and inherited metabolic disorders). The Department has monitored the feedback as these entities have subject matter expertise and a commitment to newborn screening; however, as entities that receive funding to perform these services, there is a conflict or perceived conflict of interest. Their expertise informed the proposed rules.

The Department also reached out to a neonatologist in Colorado Springs, and a pediatrician in Grand Junction.

The Department has also used the survey results to open a dialogue with birthing facilities and individuals involved in births that occur outside of a birth facility. Outreach to this community will continue. The survey results also informed the proposed rule language.

The Department received written feedback from Children's Hospital of Colorado and the Colorado Midwives Association regarding our originally proposed rules. The current proposed rules reflect significant changes made to incorporate this input.

The Department has also reviewed the following documents:

1. Clinical and Laboratory Standards Institute (CLSI). Newborn Screening Follow-up; Approved Guideline—Second Edition. CLSI document NBS02-A2 (ISBN 1-56238-875-4)

- [Print]). Clinical and Laboratory Standards Institute, 950 West Valley Road, Suite 2500, Wayne Pennsylvania 19087.
2. APHL Presentation by Dr. Susan Tanksley
  3. “Timeliness of Newborn Screening: Recommendations ”  
<https://www.aphl.org/conferences/proceedings/Documents/2015/Annual-Meeting/26Tanksley.pdf>
  4. Society for Inherited Metabolic Disorders “SIMD Position Statement: Identifying abnormal newborn screens requiring immediate notification of the health care provider.”  
<https://www.simd.org/Issues/SIMD%20NBS%20Critical%20Conditions%20policy%20statement.pdf>
  5. Dr. Joe Orsini, “Overview of Cutoff Determinations and Risk Assessment Methods used in Dried Blood Spot Newborn Screening.” ACHDNC, February 8, 2018.



**STAKEHOLDER ENGAGEMENT**  
for Repeal of Executive Director Second Newborn Screening Rules  
and Amendments to  
5 CCR 1005-4, Newborn Screening and Second Newborn Screening

State law requires agencies to establish a representative group of participants when considering to adopt or modify new and existing rules. This is commonly referred to as a stakeholder group.

**Early Stakeholder Engagement:**

The following individuals and/or entities were invited to provide input and included in the development of these proposed rules:

<b>Organization</b>	<b>Representative</b>
Hemoglobinopathies Follow-up Clinic	Donna Holstein & Dr. Kathy Hassell
Congenital Hypothyroidism Follow-up Clinic	Dr. Aristides Maniatis
Congenital Adrenal Hyperplasia Follow-up Clinic	Dr. Jennifer Barker
Children's Hospital of Colorado/Cystic Fibrosis Follow-up Clinic	Dr. Scott Sagel
Children's Hospital/Inherited Metabolic Disease Follow-up Clinic	Dr. Peter Baker
Children's Hospital/Severe Combined Immunodeficiency Follow-up Clinic	Dr. Elena Hsieh
Pediatrician (Western slope region)	Dr. Patrice Whistler
Neonatologist (Colorado Springs)	Dr. Bob Kiley
Colorado Hospital Association	Amber Burkhardt
Colorado Midwives Association	Melissa Sexton
Children's Hospital of Colorado	Ellen Stern
Laboratory Services Division staff	Dr. Emily Travanty Olga Ivanova Greg Bonn Dr. Sudhindra Rao Kyle Senger
Mother of Child with MPS-1	Christine Tippet
Wyoming DoH	Christina Taylor
Mother of Child with MCADD	Kay Kelly
Children's Hospital/ Inherited Metabolic Disease Follow-up Clinic	Dr. Janet Thomas
Biogen	Ritchard Engelhardt
Novartis	Barbara Boner
Children's Hospital/Severe Combined Immunodeficiency Follow-up Clinic	Dr. Cullen Dutmer
Patient	Lori Wise
University of Colorado Hospital (UCSH)	Dr. Mary Kohn

A variety of early stakeholder engagements were conducted. These events include activities tied to contract monitoring, as well as community outreach events such as a series of peer-to-peer networking events in August 2018. The Department also met with newborn screening stakeholders on September 25, 2018. Feedback from individual contracted specialists was also

sought to ensure the standards established in the rule could be implemented if the Department sought for the services to be provided by a contractor. Written feedback from Children's Hospital of Colorado and the Colorado Midwives Association is incorporated into the proposed rules.

The Department will continue to engage stakeholders. Additional feedback is anticipated. The Department will continue to meet with stakeholders in October and November. All feedback will be reviewed and incorporated into the packet if the Department determines it is appropriate to do so.

Stakeholder Group Notification

The stakeholder group was provided notice of the rulemaking hearing and provided a copy of the proposed rules or the internet location where the rules may be viewed. Notice was provided prior to the date the notice of rulemaking was published in the Colorado Register (typically, the 10<sup>th</sup> of the month following the Request for Rulemaking).

☒ Not applicable. This is a Request for Rulemaking Packet. Notification will occur if the Board of Health sets this matter for rulemaking.

☐ Yes.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

The Department has modified the rule language based upon its internal review, HB 18-1006 and external feedback received. The Department will continue to engage stakeholders in the coming weeks. If major issues are encountered, the Department is committed to working through them with stakeholders.

Please identify the determinants of health or other health equity and environmental justice considerations, values or outcomes related to this rulemaking.

This rulemaking and the education and outreach the Department will perform to ensure named submitters and birthing facilities are informed of the regulatory requirements and resources ensure timely newborn screening. Follow-up services link families to care and bridge the birth to short-term and long-term services and supports. CDPHE provides follow-up services for hemoglobinopathies, a group of conditions that frequently affect African Americans.

Overall, after considering the benefits, risks and costs, the proposed rule:

Select all that apply.

	Improves behavioral health and mental health; or, reduces substance abuse or suicide risk.	X	Reduces or eliminates health care costs, improves access to health care or the system of care; stabilizes individual participation; or, improves the quality of care for unserved or underserved populations.
	Improves housing, land use, neighborhoods, local infrastructure, community services, built environment, safe physical spaces or transportation.		Reduces occupational hazards; improves an individual's ability to secure or maintain employment; or, increases stability in an employer's workforce.
	Improves access to food and healthy food options.		Reduces exposure to toxins, pollutants, contaminants or hazardous substances; or ensures the safe application of radioactive material or chemicals.
X	Improves access to public and environmental health information; improves the readability of the rule; or, increases the shared understanding of roles and responsibilities, or what occurs under a rule.		Supports community partnerships; community planning efforts; community needs for data to inform decisions; community needs to evaluate the effectiveness of its efforts and outcomes.
	Increases a child's ability to participate in early education and educational opportunities through prevention efforts that increase protective factors and decrease risk factors, or stabilizes individual participation in the opportunity.		Considers the value of different lived experiences and the increased opportunity to be effective when services are culturally responsive.
X	Monitors, diagnoses and investigates health problems, and health or environmental hazards in the community.	X	Ensures a competent public and environmental health workforce or health care workforce.
	Other: _____ _____		Other: _____ _____

## DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

### Laboratory Services Division

## NEWBORN SCREENING AND SECOND NEWBORN SCREENING

### 5 CCR 1005-4

---

#### SECTION 1: AUTHORITY AND DEFINITIONS

- 1.1 THESE RULES AND REGULATIONS ARE ESTABLISHED ~~u~~Under the authority contained in Sections 25-4-801 through 25-4-804 and 25-4-10014 AND ~~through 25-4-10064 (not including Section 25-4-1004.7) C.R.,S. (1998), the following rules and regulations are established.~~
- 1.2 Definitions: The following terms, whenever used in or referred to in these regulations, shall have the following respective meanings, unless a different meaning clearly appears from the context:
- "BIRTHING FACILITY" MEANS A GENERAL HOSPITAL OR BIRTHING CENTER LICENSED OR CERTIFIED PURSUANT TO SECTION 25-1.5-103.
- "Department" shall mean the Colorado Department of Public Health and Environment.
- "EXCEPTIONAL CIRCUMSTANCES" SHALL MEAN CIRCUMSTANCES WITHIN 364 DAYS AFTER BIRTH, WHERE THE DEPARTMENT, AT ITS SOLE DISCRETION, MAY DETERMINE TIMELY COLLECTION OF A SPECIMEN WAS NOT FEASIBLE BUT SCREENING REMAINS APPROPRIATE. THIS INCLUDES BUT IS NOT LIMITED TO OBTAINING SAMPLES FOR CHILDREN BORN OUTSIDE THE UNITED STATES WHO RELOCATE TO COLORADO THROUGH THE ADOPTION PROCESS OR A REFUGEE RESETTLEMENT PROGRAM.
- "FOLLOW-UP SERVICES" SHALL MEAN 1) REPEAT OR CONFIRMATORY TESTING IF CLINICALLY NECESSARY AS DETERMINED BY THE DEAPRTMENT, OR 2) FOR NEWBORNS THAT SCREEN POSITIVE, INITIALLY OR THROUGH REPEAT OR CONFIRMATORY TESTING, REFERRAL SERVICES TO CONNECT NEWBORNS TO THE HEALTHCARE SYSTEM FOR THE PURPOSE OF RECEIVING A DIAGNOSIS, AN INTERVENTION, OR SPECIALTY CARE. FOLLOW-UP SERVICES DOES NOT INCLUDE ANY HEALTHCARE SYSTEM SERVICES.
- "Initial ~~N~~newborn ~~S~~screening ~~S~~specimen" shall mean ABSENT EXCEPTIONAL CIRCUMSTANCE, A specimen collected from a newborn prior to discharge BETWEEN 24 AND 48 HOURS AFTER BIRTH AND TO THE EXTENT FEASIBLE, PRIOR TO ANY BLOOD TRANSFUSION ~~but in all cases within 48 hours after birth for the purpose of conducting screening tests.~~
- "Laboratory" shall mean the Colorado Department of Public Health and Environment Laboratory.

“NAMED SUBMITTER” SHALL MEAN THE ENTITY OR INDIVIDUAL IDENTIFIED AS THE SUBMITTER OF THE SPECIMEN ON THE DEMOGRAPHIC SLIP ATTACHED TO THE BLOOD SPOT CARD.

“NEWBORN” SHALL MEAN A CHILD UNDER 28 DAYS OF AGES. NEWBORNS MAY BE REFERRED TO AS “NEONATES.”

“NON-URGENT SCREEN POSITIVE RESULT” SHALL MEAN AN INITIAL NEWBORN SCREENING SPECIMEN RESULT ASSOCIATED WITH ANY RISK LEVEL FOR A TIME-SENSITIVE CONDITION OR A MODERATE RISK LEVEL FOR A TIME-CRITICAL CONDITION, THEREBY ALLOWING TIME FOR COLLECTION AND TESTING OF A SECOND NEWBORN SCREENING SPECIMEN.

“SCREEN NEGATIVE” SHALL MEAN A RESULT FROM A SCREENING TEST THAT DOES NOT INDICATE THE PRESENCE OF THE SCREENED CONDITION.

“SCREEN POSITIVE” SHALL MEAN A RESULT FROM SCREENING TEST THAT INDICATES SOME LIKELIHOOD OF THE SCREENED CONDITION(S) BEING PRESENT, AND FURTHER INVESTIGATION OR TESTING OF THE NEWBORN IS REQUIRED.

“SECOND NEWBORN SCREENING SPECIMEN” SHALL MEAN A SPECIMEN COLLECTED FROM A NEWBORN BETWEEN 8 AND 14 DAYS AFTER BIRTH FOR THE PURPOSE OF CONDUCTING SECOND SCREENING TESTS.

“TIME-CRITICAL CONDITION” SHALL MEAN A CONDITION IDENTIFIED BY THE DEPARTMENT TO BE ASSOCIATED WITH EARLY ONSET OF SEVERE SYMPTOMS INCLUDING DEATH OR INTELLECTUAL OR OTHER PERMANENT DISABILITIES.

“TIME-SENSITIVE CONDITION” SHALL MEAN A CONDITION IDENTIFIED BY THE DEPARTMENT NOT TO BE ASSOCIATED WITH EARLY ONSET OF SEVERE SYMPTOMS INCLUDING DEATH OR INTELLECTUAL OR OTHER PERMANENT DISABILITIES.

“UNSATISFACTORY SPECIMEN” SHALL MEAN A SPECIMEN FOR WHICH ALL TIERS OF TESTING PERFORMED WITHIN THE LABORATORY COULD NOT BE COMPLETED FOR ANY REASON, SUCH AS THE QUALITY OF THE SPECIMEN OR THE AMOUNT OF SPECIMEN PROVIDED.

“URGENT SCREEN POSITIVE RESULT” SHALL MEAN A POSITIVE SCREENING RESULT THAT SUGGESTS A HIGH LIKELIHOOD OF A TIME-CRITICAL CONDITION.

## SECTION 2: NEWBORN SCREENING REQUIREMENTS FOR NAMED SUBMITTERS

### 2.1. HYGIENIC COLLECTION CONDITIONS

WORK AREAS USED TO COLLECT SAMPLES WILL BE CLEAN AND SANITARY. INDIVIDUALS COLLECTING SAMPLES WILL FOLLOW HYGIENIC PRACTICES INCLUDING HANDWASHING.

### 2.2 SPECIMEN COLLECTION, HANDLING, AND SUBMISSION

- 2.2.1 Births in BIRTHING FACILITIES ~~Institutions~~: The blood specimens of newborns born in BIRTHING FACILITIES ~~institutions~~ and all other specimens taken in conformity with the law and these regulations will be sent to the Laboratory for testing. PURSUANT TO SECTION 25-4-1004(1)(B), C.R., S., THE BIRTHING FACILITY WHERE THE INFANT IS BORN SHALL FORWARD ALL SPECIMENS TO THE LABORATORY.

~~Follow up specimens from newborns with positive screening tests will be obtained and tested~~ PURSUANT TO SECTION 25-4-1004(2), C.R., S., THE BIRTHING FACILITY WHERE THE INFANT IS BORN SHALL ALSO BE RESPONSIBLE FOR HELPING TO CONNECT INFANTS WHO SCREEN POSITIVE TO FOLLOW-UP SERVICES TO INCLUDE AIDING IN THE COLLECTION OF ADDITIONAL SPECIMENS FOR UNSATISFACTORY SPECIMENS OR SPECIMENS WITH EQUIVOCAL RESULTS, AS WELL AS COLLECTION OF ADDITIONAL SPECIMENS FOR RESOLUTION OF NON-URGENT AND URGENT SCREEN POSITIVE RESULTS, as necessary for proper diagnosis.

- 2.2.1.1 ~~The hospital or institution or the chief medical staff officer or other person in charge thereof~~ BIRTHING FACILITY will cause an initial newborn screening specimen to be obtained from every newborn born therein ~~as late as possible before discharge, but no later than 48 hours of age.~~

- 2.2.1.2 The specimen shall consist of capillary blood collected by heel puncture or alternate method authorized by the Laboratory, directly upon special blotter paper furnished by the Laboratory.

THE INITIAL NEWBORN SCREENING SPECIMEN SHALL BE COLLECTED AT 24 HOURS OF AGE, BUT NO LATER THAN 48 HOURS OF AGE.

HEEL PUNCTURE SAMPLING WILL OCCUR IN A MANNER THAT MAINTAINS THE HEALTH AND SAFETY OF THE NEWBORN AND INDIVIDUAL COLLECTING THE SAMPLE; ENSURE PROPER LABELING AND PREPARATION OF THE SPECIMEN FOR DELIVERY, AND ALLOW FOR ACCURATE TEST RESULTS AND PROPER DIAGNOSIS.

All circles shall be saturated with blood from one side of the blotter only. The specimen submitter will provide, on the attached form, all information requested by the Laboratory.

The specimens, WILL BE after air DRIED FOR THREE TO FOUR HOURS. SPECIMENS, AFTER AIR drying, will be forwarded to the Laboratory within 24 hours of collection, by courier or overnight delivery if available. SPECIMENS WILL BE SUBMITTED IN THE FORM AND MANNER REQUIRED BY THE DEPARTMENT.

2.2.1.3 If the newborn is to receive a blood transfusion, then the specimen for newborn screening is to be obtained prior to this procedure. IF A SPECIMEN IS COLLECTED AFTER TRANSFUSION, THE COLLECTION FORM WILL BE MARKED APPROPRIATELY TO INDICATE TRANSFUSION OCCURRED.

2.2.2 Births Outside BIRTHING FACILITIES Institutions: The physician, nurse REGISTERED midwife, or other health professional attending a birth outside a BIRTHING FACILITY hospital, shall be responsible for the collections and forwarding of the specimen described in 2.2.1.2 above. In the absence of a health professional, any other person attending the birth, or in the absence of any person so attending, the PARENT(S) father or mother LEGAL GUARDIAN(S), or in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred shall be responsible.

~~1.4 Testing and Reporting: The prescribed tests will be initiated by the Laboratory within 24 hours of receipt of the specimen, weekends and holidays excepted. The Laboratory shall report as follows:~~

~~1.4.1 Reports of normal test results will be sent to the submitting agency within seven working days.~~

~~1.4.2 Abnormal test results will be reported immediately by telephone to the physician of record and to designated consultants. In case of inability to identify or locate a physician of record, the abnormal test result will be reported to the hospital or submitting agency which originated the specimen, or, if the birth did not occur in a health facility, to the father or mother.~~

~~1.4.3 Unsatisfactory specimens or specimens with equivocal results will be reported immediately to the submitting agency which originated the specimen with an explanation of the results. The submitting agency responsible for the newborn's care at the time of the report will cause another specimen to be forwarded at the appropriate time.~~

1.4.4.2.3. CARE COORDINATION

The submitting agency NAMED SUBMITTER that originated the specimen shall forward the Nnewborn Sscreening SCREEN NEGATIVE AND SCREEN POSITIVE results PRODUCED



BY THE LABORATORY PURSUANT TO RULE 4 to the health care provider responsible for the newborn's care within the time frame of 1.4.1 and 1.4.3 above SEVEN DAYS FOR SCREEN NEGATIVE RESULTS, WITHIN 72 HOURS FOR NON-URGENT SCREEN POSITIVE RESULTS AND WITHIN 24 HOURS FOR URGENT SCREEN POSITIVE RESULTS.

#### ~~1.5 Quality Control and Education~~

~~1.5.1 The Laboratory shall have available for review a written quality assurance program plan covering all aspects of laboratory activity.~~

~~1.5.2 The Laboratory shall make available educational materials and training concerning specimen collection to all submitting agencies.~~

#### 62.4 List of Conditions for Newborn Screening

The Laboratory shall conduct screening tests for the following conditions:

- 2.4.1 Phenylketonuria
- 2.4.2 Congenital Hypothyroidism
- 2.4.3 Hemoglobinopathies
- 2.4.4 Galactosemia
- 2.4.5 Cystic Fibrosis
- 2.4.6 Biotinidase Deficiency
- 2.4.7 Congenital Adrenal Hyperplasia
- 2.4.8 Medium Chain Acyl-CoA dehydrogenase deficiency
- 2.4.9 Very Long Chain Acyl-CoA dehydrogenase deficiency
- 2.4.10 Long-Chain L-3-Hydroxy Acyl-CoA dehydrogenase deficiency
- 2.4.11 Trifunctional protein deficiency
- 2.4.12 Carnitine Acyl-carnitine translocase deficiency
- 2.4.13 Short Chain Acyl-CoA dehydrogenase deficiency
- 2.4.14 Carnitine palmitoyltransferase II deficiency
- 2.4.15 Glutaric acidemia Type 2
- 2.4.16 Arginosuccinic acidemia

- 2.4.17 Citrullinemia
- 2.4.18 Tyrosinemia
- 2.5.19 Hypermethionemia
- 2.4.20 Maple Syrup urine disease
- 2.4.21 Homocystinuria
- 2.4.22 Isovaleric academia
- 2.4.23 Glutaric acidemia Type 1
- 2.5.24 3-hydroxy-3-methylglutaryl-CoA Lyase deficiency
- 2.4.25 Multiple Carboxylase deficiency
- 2.4.26 3-methylcrotonyl-CoA carboxylase deficiency
- 2.4.27 3-methylglutaconic aciduria
- 2.4.28 Methylmalonic acidemias
- 2.4.29 Propionic academia
- 2.4.30 beta-Ketothiolase deficiency
- 2.4.31 Carnitine uptake defect
- 2.4.32 Arginase deficiency
- 2.4.33 Malonic academia
- 2.4.34 Carnitine palmitoyltransferase deficiency 1A
- 2.4.35 Severe Combined Immunodeficiency

~~RULES AND REGULATIONS OF THE EXECUTIVE DIRECTOR COLORADO DEPARTMENT OF  
PUBLIC HEALTH AND ENVIRONMENT  
IMPLEMENTATION OF SECOND NEWBORN SCREENING~~

~~1.1 Under the authority contained in Section 25-4-1004.5(3) C.R.S., the following Rules and Regulations are established.~~

~~1.2 Definitions~~

~~“Department” shall mean the Colorado Department of Public Health and Environment.  
“Executive Director” shall mean the executive director of the Colorado Department of Public Health and Environment.~~

~~“Laboratory” shall mean the Colorado Department of Public Health and Environment Laboratory.~~

~~“Initial newborn screening specimen” shall mean specimen collected from a newborn prior to discharge, but in all cases within 48 hours after birth for the purpose of conducting screening tests.~~

~~“Second newborn screening specimen” shall mean a specimen collected from a newborn between eight and 14 days after birth, but in no case less than 72 hours or greater than 30 days after birth, for the purpose of conducting screening tests.~~

SECTION 3: SECOND NEWBORN SCREENING REQUIREMENTS FOR NAMED SUBMITTERS

3.1. HYGIENIC COLLECTION CONDITIONS

WORK AREAS USED TO COLLECT SAMPLES WILL BE CLEAN AND SANITARY. INDIVIDUALS COLLECTING SAMPLES WILL FOLLOW HYGIENIC PRACTICES INCLUDING HANDWASHING.

3.2 NOTIFICATION, SPECIMEN COLLECTION, HANDLING AND DELIVERY

3.2.1 NOTIFICATION

~~1.3 Procedures~~

~~The parent(s) or other legal guardian(s) of the newborn shall be advised of the necessity of the THAT A second newborn screening test IS REQUIRED FOR CONDITIONS IDENTIFIED IN RULE 3.3.~~

3.2.1 Births in BIRTHING FACILITIES Institutions: It shall be the responsibility of the hospital or institution or the chief medical staff officer or other person in charge thereof BIRTHING FACILITY to advise, verbally and in writing, such as by written information made available from the Department, the parent(s) or other legal guardian(s) of the newborn that it is necessary to have a second newborn screening test performed.

3.2.2 Births outside BIRTHING FACILITIES Institutions: It shall be the responsibility of the physician, nurse midwife, lay REGISTERED

midwife, or other health professional attending a birth outside a BIRTHING FACILITY hospital to advise, verbally and in writing, such as by written information made available from the Department, the parent(s) or other legal guardian(s) of the newborn, of the necessity of the second newborn screening.

### 3.2.2 COLLECTION

~~1.3.2~~ 3.2.2.1 The attending health care provider shall collect or require the specimen be collected from all newborns at the first post partum A NEWBORN WELL CHILD appointment BETWEEN 8 AND 14 DAYS AFTER BIRTH, but in no case less than 72 hours or greater than 30 days after birth.

The specimen shall consist of capillary blood collected by heel puncture or alternate method authorized by the Laboratory, directly upon special blotter paper furnished by the Laboratory.

HEEL PUNCTURE SAMPLING WILL OCCUR IN A MANNER THAT MAINTAINS THE HEALTH AND SAFETY OF THE NEWBORN AND INDIVIDUAL COLLECTING THE SAMPLE; ENSURE PROPER LABELING AND PREPARATION OF THE SPECIMEN FOR DELIVERY, AND ALLOW FOR ACCURATE TEST RESULTS AND PROPER DIAGNOSIS.

All circles shall be saturated with blood from one side of the blotter only. The submitter will provide, on the attached form, all information requested by the Laboratory.

The specimens, ~~after drying~~ WILL BE air DRIED FOR THREE TO FOUR HOURS. The Sspecimens, after air drying, shall be forwarded to the Laboratory within 24 hours of collection by first class mail, courier, or overnight delivery. SPECIMENS WILL BE SUBMITTED IN THE FORM AND MANNER REQUIRED BY THE DEPARTMENT.

~~1.4~~ Testing and Reporting: The prescribed tests will be initiated by the Laboratory within 24 hours of receipt of the specimen, weekends and holidays excepted. The Laboratory shall report as follows:

~~1.4.1~~ Reports of normal test results will be sent to the submitting agency within seven working days.

~~1.4.2~~ Abnormal test results will be reported immediately by telephone to the physician of record and to designated consultants. In case of inability to identify or locate a physician of record, the abnormal test result will be reported to the submitting agency which originated the specimen, or, if the birth did not occur in a health facility, to the father or mother.

~~1.4.3~~ Unsatisfactory specimens or specimens with equivocal results will be reported immediately to the submitting agency which originated the specimen with an explanation of the results. The health care provider responsible for the

~~newborn's care at the time of the report will cause another specimen to be forwarded at the appropriate time.~~

~~1.4.4 The submitting agency that originated the specimen shall forward the newborn screening results to the health care provider responsible for the newborn's care.~~

#### ~~1.5 Quality Control and Education~~

~~1.5.1 The Laboratory shall have available for review a written quality assurance program plan covering all aspects of testing and reporting second specimens.~~

~~1.5.2 The Laboratory shall make available educational materials and training concerning specimen collection to submitting agencies.~~

3.2.2.2 SECTION 25-4-1004.5(3)(b)(IV), C.R.S., ALLOWS EXCEPTIONS TO SECOND SCREENING SPECIMEN COLLECTION. SECOND SCREENING SPECIMEN COLLECTION IS NOT REQUIRED FOR THE CONDITIONS IDENTIFIED AT 3.3.4, 3.3.5 AND 3.3.6 UNLESS: AN UNSATISFACTORY SPECIMEN WAS SUBMITTED FOR FIRST SCREEN TESTING; AN ABNORMAL RESULT WAS OBTAINED ON FIRST SCREEN TESTING, OR; THERE IS NO RECORD OF A SATISFACTORY FIRST SCREEN SPECIMEN SUBMISSION.

### 3.3 List of Conditions for Second Newborn Screening

~~4.6.4~~The Laboratory shall conduct screening tests for the following conditions:

- 3.3.1 Phenylketonuria
- 3.3.2 Congenital Hypothyroidism
- 3.3.3 Hemoglobinopathies
- 3.3.4 Galactosemia 4
- 3.3.5 Cystic Fibrosis 4
- 3.3.6 Biotinidase Deficiency 4
- 3.3.7 Congenital Adrenal Hyperplasia

~~1) These disorders need not be tested again unless:~~

- ~~a) an unsatisfactory specimen was submitted for the first screen testing, or~~
- ~~b) an abnormal result was obtained on the first screen testing, or~~
- ~~c) no record of a satisfactory first screen specimen submission can be ascertained.~~

SECTION 4: LABORATORY TESTING, REPORTING AND FOLLOW-UP SERVICES FOR NEWBORN SCREENING AND SECOND NEWBORN SCREENING

- 4.1 TESTS WILL BE INITIATED BY THE LABORATORY IN THE NEXT DAILY BATCH OF SPECIMEN PROCESSING AFTER RECEIPT OF THE SPECIMEN WITH THE LABORATORY OPERATING AT LEAST SIX (6) DAYS PER WEEK.

RESULTS WILL BE SENT TO THE NAMED SUBMITTER FOR NEWBORN SCREENING AND FOR SECOND NEWBORN SCREENING. RESULTS WILL BE REPORTED IN A MANNER AND ON A TIMELINE CONSISTENT WITH THE URGENCY OF INTERVENTION.

- 4.1.1 REPORTS OF SCREEN NEGATIVE TEST RESULTS WILL BE SENT WITHIN SEVEN WORKING DAYS.

- 4.1.2 AN ATTEMPT TO REPORT URGENT RESULTS WILL BE MADE IMMEDIATELY, BUT IN NO CASE LONGER THAN 24 HOURS. REPORTING MAY OCCUR THROUGH THE DEPARTMENT OR ITS DESIGNEE. ATTEMPTS TO REPORT URGENT RESULTS WILL CONTINUE FOR UP TO SIX MONTHS.

- 4.1.2.1 IF A DESIGNEE IS UTILIZED BY THE DEPARTMENT, THE DESIGNEE MAY RECEIVE IDENTIFYING PATIENT INFORMATION, PROTECTED HEALTH INFORMATION, NAMED SUBMITTER INFORMATION AND ATTENDING HEALTH CARE PROVIDER INFORMATION TO THE EXTENT NECESSARY TO PERFORM THESE DUTIES AND IN THE MANNER AUTHORIZED BY LAW.

- 4.1.3 AN ATTEMPT TO REPORT NON-URGENT RESULTS WILL BE MADE IMMEDIATELY, BUT IN NO CASE LONGER THAN 72 HOURS. REPORTING MAY OCCUR THROUGH THE DEPARTMENT OR ITS DESIGNEE. ATTEMPTS TO REPORT NON-URGENT RESULTS WILL CONTINUE FOR UP TO SIX MONTHS.

- 4.1.3.1 IF A DESIGNEE IS UTILIZED BY THE DEPARTMENT, THE DESIGNEE MAY RECEIVE IDENTIFYING PATIENT INFORMATION, PROTECTED HEALTH INFORMATION, NAMED SUBMITTER INFORMATION AND ATTENDING HEALTH CARE PROVIDER INFORMATION TO THE EXTENT NECESSARY TO PERFORM THESE DUTIES AND IN THE MANNER AUTHORIZED BY LAW.

- 4.1.4 AN ATTEMPT TO REPORT UNSATISFACTORY SPECIMENS OR SPECIMENS WITH EQUIVOCAL RESULTS WILL BE MADE IMMEDIATELY, BUT IN NO CASE LONGER THAN 48 HOURS.

- 4.2 FOLLOW-UP SERVICES

THE FOLLOWING RULES APPLY TO FOLLOW-UP SERVICES, WHILE RECOGNIZING THAT FAMILY PARTICIPATION IN THE FOLLOW-UP SUPPORT AND ASSISTANCE SERVICES IS VOLUNTARY.

#### 4.2.1 TIMEFRAME FOR INITIATING SERVICES

4.2.1.1 FOR URGENT POSITIVE SCREEN RESULTS, FOLLOW-UP SERVICES WILL BE INITIATED WITHIN FOUR HOURS OR THE CLINICALLY-RELEVANT TIMEFRAME AUTHORIZED BY THE DEPARTMENT TO PREVENT DEATH OR INTELLECTUAL OR OTHER PERMANENT DISABILITIES.

4.2.1.2 FOR NON-URGENT POSITIVE SCREEN RESULTS, FOLLOW-UP SERVICES WILL BE INITIATED WITHIN A CLINICALLY-RELEVANT TIMEFRAME TO PREVENT DEATH OR INTELLECTUAL OR OTHER PERMANENT DISABILITIES. WHEN REQUIRED BY THE DEPARTMENT, FOLLOW-UP SERVICES WILL BEGIN WITH REPEAT OR CONFIRMATORY TESTING.

#### 4.2.1 REPEAT OR CONFIRMATORY TESTING

REPEAT OR CONFIRMATORY TESTING WILL OCCUR WHEN CLINICALLY NECESSARY AS DETERMINED BY THE DEPARTMENT. IF, THROUGH REPEAT OR CONFIRMATORY TESTING, THE NEWBORN SCREENING RESULT IS SCREEN NEGATIVE, FOLLOW-UP SERVICES WILL BE DISCONTINUED AFTER COMMUNICATING THE RESULT.

#### 4.2.3 TIMEFRAME FOR PROVIDING REFERRAL SERVICES

REFERRALS TO SPECIALISTS WILL OCCUR WITHIN THE FIRST 27 DAYS OF LIFE. AT ITS DISCRETION, THE DEPARTMENT MAY EXTEND FOLLOW-UP SERVICES BEYOND 27 DAYS OF LIFE WHEN REPEAT OR CONFIRMATORY TESTING, DIAGNOSIS, INTERVENTIONS HAVE CREATED NECESSARY DELAYS TO THE DEPARTMENT'S ABILITY TO PROVIDE REFERRAL SERVICES. IN NO INSTANCE WILL FOLLOW-UP SERVICES CONTINUE BEYOND 180 DAYS OF THE CHILD'S BIRTH.

#### 4.2.4 IF A DESIGNEE IS UTILIZED BY THE DEPARTMENT TO PERFORM FOLLOW-UP SERVICES, THE DESIGNEE MAY RECEIVE IDENTIFYING PATIENT INFORMATION, PROTECTED HEALTH INFORMATION, NAMED SUBMITTER INFORMATION AND ATTENDING HEALTH CARE PROVIDER INFORMATION TO THE EXTENT NECESSARY TO PERFORM THESE DUTIES AND IN THE MANNER AUTHORIZED BY LAW.

#### 4.2.5 MONITORING PARTICIPATION IN FOLLOW-UP SERVICES

THE DEPARTMENT SHALL MONITOR:

- 4.2.5.1 THE NUMBER OF NEWBORNS WITH A POSITIVE SCREEN RESULT WHO OPT TO NOT PARTICIPATE IN FOLLOW-UP SERVICES;
  - 4.2.5.2 THE NUMBER OF NEWBORNS WITH A POSITIVE SCREEN RESULT WHO RECEIVE REPEAT AND CONFIRMATORY TESTING WHEN CLINICALLY NECESSARY;
  - 4.2.5.3 THE NUMBER OF NEWBORNS WITH A POSITIVE SCREEN RESULT WHO RECEIVE REFERRAL SERVICES;
  - 4.2.5.4 THE NUMBER OF NEWBORNS WITH A POSITIVE SCREEN RESULT WHO MOVE OUT OF STATE, WITHDRAW FROM OR DO NOT PARTICIPATE IN FOLLOW-UP SERVICES, AND;
  - 4.2.5.5 SUCH OTHER MONITORING THE DEPARTMENT DEEMS APPROPRIATE TO MONITOR THE EFFECTIVENESS OF NEWBORN SCREENING, SECOND NEWBORN SCREENING AND FOLLOW-UP SERVICES.
- 4.3 IF A DESIGNEE IS UTILIZED BY THE DEPARTMENT, THE DESIGNEE MAY RECEIVE IDENTIFYING PATIENT INFORMATION, PROTECTED HEALTH INFORMATION, NAMED SUBMITTER INFORMATION AND ATTENDING HEALTH CARE PROVIDER INFORMATION TO THE EXTENT NECESSARY TO PERFORM THESE DUTIES AND IN THE MANNER AUTHORIZED BY LAW.





# COLORADO

Board of Health

Department of Public Health & Environment

## Notice of Public Rule-Making Hearing

Scheduled for December 19, 2018

NOTICE is hereby given pursuant to the provisions of Section 24-4-103, C.R.S., that the Executive Director will conduct a public rule-making hearing on December 19, 2018 at 10:00 p.m., at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Bldg. A, First Floor, Sabin-Cleere Conference Room, Denver, CO 80246, to transfer second newborn screening rules promulgated by the Executive Director to the Board of Health. To transfer the rules, the Executive Director will repeal the Executive Director rules and the Board of Health will entertain adopting the rules. The Board of Health will hold a rulemaking hearing concerning newborn screening and second newborn screening at the same time. Rulemaking is necessary because HB 18-1006 transferred rulemaking authority for second newborn screening from the Executive Director to the Board of Health, see Section 25-4-1004, C.R.S. and Section 25-4-1004.5 C.R.S.

The rulemaking materials for the Board of Health and Executive Director rulemaking have been combined and will be available on the Board of Health rulemaking website, <https://www.colorado.gov/pacific/cdphe/board-health-meetings>, at least 7 days prior to the meeting. The rules together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis will be available for inspection at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 at least five working days prior to the hearing. Copies of the rules may be obtained by contacting the Colorado Department of Public Health and Environment, Laboratory Services Division, 8100 Lowry Blvd., Denver, CO 80230, (303) 692-3681.

The Executive Director encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Executive Director oral testimony at the hearing may be limited to three minutes or less. Written testimony must be submitted no later than 5:00 p.m., Thursday, December 13, 2018. Persons wishing to submit written testimony should submit to: Colorado Department of Public Health and Environment, Executive Director, ATTN: Amy Intermont, Executive Assistant, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: [cdphe.bohrequests@state.co.us](mailto:cdphe.bohrequests@state.co.us)

Dated this 29th day of October, 2018.

Deborah  
Nelson

Digitally signed by  
Deborah Nelson  
Date: 2018.10.29 12:08:28  
-06'00'

Deborah Nelson  
Office of Legal and Regulatory Compliance

# Notice of Proposed Rulemaking

**Tracking number**

2018-00600

**Department**

1000 - Department of Public Health and Environment

**Agency**

1005 - Laboratory Services Division

**CCR number**

5 CCR 1005-4

**Rule title**

NEWBORN SCREENING AND SECOND NEWBORN SCREENING

**Rulemaking Hearing****Date**

12/19/2018

**Time**

10:00 AM

**Location**

4300 Cherry Creek Drive South, Denver, CO 80246

**Subjects and issues involved**

The department is recommending amendments to implement HB 18-1006 and requests the Board of Health adopt the second newborn screening rules from the Executive Director. Additionally, proposed amendments implement the new directive of HB 18-1006 authorizing the board of health to promulgate rules to establish and maintain appropriate follow-up services on positive screen cases in order that measures may be taken to prevent death or intellectual or other permanent disabilities. Lastly, the department proposed revisions implement updates to align with current statutory language and statutory citations.

**Statutory authority**

§25-4-1004, C.R.S.

§25-4-1004.5, C.R.S

**Contact information****Name**

Darren Michael

**Title**

Newborn Screening Program Manager

**Telephone**

303-692-3673

**Email**

darren.michael@state.co.us



**COLORADO**  
Department of Public  
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

To: Members of the State Board of Health

From: Dr. Darren Michael, Newborn Screening Program Manager, Laboratory Services Division

Through: Randy Kuykendall, *RK*  
Interim Administrative Director, Laboratory Services Division

Date: October 18, 2018

Subject: **Request for Rulemaking Hearing**  
Proposed Amendments to 5 CCR 1005-4, *Newborn Screening and Second Newborn Screening* with a request for a rulemaking hearing to be set for December 19, 2018

---

In preparation for a Public Rulemaking Hearing, please find copies of the following documents:

- a) Proposed Amendments to 5 CCR 1005-4,
- b) Statement of Basis and Purpose and Specific Statutory Authority,
- c) Regulatory Analysis, and
- d) Early Stakeholder Engagement

As summarized in the fiscal note for HB 18-1006:

When an infant is born in Colorado, the two blood samples are collected and forwarded to the CDPHE, which tests for 37 rare genetic and metabolic conditions. The first sample is taken by the hospital, birthing facility, or midwife within 48 hours of birth; the second sample is collected by the infant's pediatrician approximately 8 to 14 days after birth [for certain conditions identified in the rules]. In the event of a positive result, a specialist on the condition reaches out to the family of the infant to arrange for follow-up services and/or additional testing.

At present, the *Newborn Screening and Second Newborn Screening* rules perform the following functions:

- a) Define key terms,
- b) Establish procedures for the collection and submission of blood spot specimens for testing,
- c) Establish procedures for testing of specimens and reporting of results,
- d) Establish requirements for quality control and education, and
- e) List conditions covered by the initial and second newborn screening panels.

While the overall set of rules is titled "Newborn Screening and Second Newborn Screening," there are two sub-sections titled "Newborn Screening Regulations" and "Implementation of Second Newborn Screening." Together, these definitions, procedures and requirements establish roles and responsibilities, as well as best practices, for the metabolic testing portion of Colorado's Newborn Screening Program. The majority of the rule is promulgated through

the State Board of Health; however, the Executive Director had rulemaking authority over aspects of second newborn screening.

Recent legislation (House Bill 18-1006, *Infant Newborn Screening*) updated and expanded the statutes related to newborn screening in Colorado. Though the statutes were reorganized, the rulemaking authority that serves as the basis for the current rules is largely unchanged.

*Section 25-4-1004(3), C.R.S. states:*

The state board shall promulgate rules concerning the requirements of the newborn screening program for genetic and metabolic disorders, including: (i) in addition to those conditions listed in subsection (1)(b) Of this section, any other conditions for which testing must occur; (ii) obtaining samples or specimens from newborn infants required for the tests prescribed by the state board; and (iii) the handling and delivery of samples or specimens for testing and examination.

Board of Health authority to promulgate rules that identify which conditions will require a second screening is unchanged, Section 25-4-1004.5(3)(a), C.R.S. However, HB 18-1006 transferred the Executive Director's rulemaking authority to establish the standards for second specimen testing to the Board of Health. Section 25-4-1004.5(3)(b), C.R.S. now reads:

The state board [of health] is authorized to promulgate rules and standards for the implementation of the second specimen testing specified in this subsection (3), including: (I) Identification of those conditions for which a second specimen shall be required; (II) The age of the infant at which the second screening may be administered; (III) The method by which the parent or parents of a newborn shall be advised of the necessity for a second specimen test; (IV) The procedure to be followed in administering the second specimen test; (V) Any exceptions to the necessity for a second specimen test and the procedures to be followed in such cases; and (VI) The standards of supervision and quality control that shall apply to second specimen testing.

Though the rulemaking authority has changed, the rulemaking authorization is substantively the same. To effectuate the change the Department requests the Executive Director repeal the Executive Director rules and that the Board of Health adopt the second newborn screening rules as modified herein.

HB 18-1006 also expanded the Board of Health's rulemaking authority to include follow-up services. Section 25-4-1005.4(2)(c), C.R.S., states:

The state board [of health] shall promulgate rules to establish and maintain appropriate follow-up services on positive screen cases in order that measures may be taken to prevent death or intellectual or other permanent disabilities. The follow-up services must include [i] identification of newborns at risk for genetic conditions, [ii] coordination among medical providers and families, [iii] connecting newborns who screen positive to timely intervention and appropriate referrals to specialists for follow-up and diagnostic testing, and [iv] additional duties as determined by the [Colorado Department of Public Health and Environment]. (Numbering, in the form of [i]-[iv], has been added to statutory text to aid with analysis.)

The proposed revisions implement this new directive.

Last, the proposed revisions implement the results of the Department's regulatory efficiency review that occurred pursuant to E.O. D 12-002 and Section 24-4-103.3, C.R.S. This includes updates to align with current statutory language and statutory citations.

The proposed revisions do not address the newborn hearing screening rulemaking requirements in HB 18-1006. These rules are being developed by the Department's Center for Health and Environmental Data. It is anticipated that these will come to the Board of Health in early 2019.

This rulemaking does not add new conditions or modify the list of conditions on the panel.

STATEMENT OF BASIS AND PURPOSE  
AND SPECIFIC STATUTORY AUTHORITY  
for Repeal of Executive Director Second Newborn Screening Rules  
and Amendments to  
5 CCR 1005-4, Newborn Screening and Second Newborn Screening

Basis and Purpose.

The *Newborn Screening and Second Newborn Screening* rules perform the following functions:

- a) Define key terms,
- b) Establish procedures for the collection and submission of blood spot specimens for testing,
- c) Establish procedures for testing of specimens and reporting of results,
- d) Establish requirements for quality control and education, and
- e) List conditions covered by the initial and second newborn screening panels.

Together, these definitions, procedures and requirements establish roles and responsibilities, for the genetic and metabolic testing portion of Colorado's Newborn Screening Program.

The following changes to the rules are being proposed:

- 1) The Department proposes several modifications and additions to definitions in Section 1.2 of the rules. The new definitions of "Named Submitter" and "Birthing Facility" clarify roles and responsibilities, and align with new statutory language. The new definition of "Exceptional Circumstances" acknowledges situations, such as refugee populations, where timely collection may be challenging. It is current practice for the Department to accept specimens from children up to 365 days of life when the child can still benefit from screening. "Newborn" has been defined using guidance from the World Health Organization. Several definitions such as "Screen Negative," "Screen Positive," "Urgent Screen Positive," "Non-urgent Screen Positive Result," "Time-Critical Condition," and "Time-Sensitive Condition" are taken from or adapted from the cited Clinical and Laboratory Standards Institute document (1) or the cited position statement by the Society for Inherited Metabolic Disorders (4). "Follow up" is also defined as described below in item 4b.
- 2) Quality control and education standards are communicated in the current *Newborn Screening Regulations and Implementation of Second Newborn Screening sections*. Upon review of the statutory authorization for rulemaking, this language has been removed as the statute does not require or authorize board of health rules directing the Department to provide quality assurance plans and education. Under the Executive Director's administrative responsibilities, quality control and information about the programs is required pursuant to Section 25-4-1003(2)(a) and (f), C.R.S. The Executive Director is authorized to promulgate rules; however, the Department determined that rules are not required as this activity can be managed administratively. Though removed from the rule when repealing the Executive Director rules, the Department's quality assurance and educational activities will continue.

Section 25-4-1004.5(3), C.R.S., does require the Board of Health to promulgate rules governing supervision and quality control standards for second specimen testing.

- 3) The substantive changes to Section 3 include new language to support the collection of a second newborn screening specimen at newborn well child visit. The term ‘newborn well child’ visit is used widely by the pediatric community, which is the intended audience for this rule. Also, the term ‘post partum’ was removed to avoid confusion for obstetrics and gynecology physicians, who typically see mothers approximately six weeks after delivery.
- 4) Section 4 of the proposed rule is written to reflect recent changes to statute through House Bill 18-1006.
  - a. The rules now clarify that the state newborn screening laboratory operates six days per week, as required by statute.
  - b. Definitions and requirements related to follow-up services are now included. Section 25-4-1004.5(2)(c), C.R.S. states,

The state board [of health] shall promulgate rules to establish and maintain appropriate follow-up services on positive screen cases in order that measures may be taken to prevent death or intellectual or other permanent disabilities. The follow-up services must include [i] identification of newborns at risk for genetic conditions, [ii] coordination among medical providers and families, [iii] connecting newborns who screen positive to timely intervention and appropriate referrals to specialists for follow-up and diagnostic testing, and [iv] additional duties as determined by the [Colorado Department of Public Health and Environment]. (Numbering, in the form of [i]-[iv], has been added to statutory text to aid with analysis.)

To implement HB 18-1006, the proposed rule establishes follow-up services for any positive screen result. The Department needs to manage false-positives and thus, the rule recognizes that the department may require repeat or confirmatory testing prior to initiating referral services. The proposed rule then establishes the time frame in which follow-up services may occur.

The Department acknowledges that Newborn Screening is one of many services Colorado provides. Services offered through the Colorado Department of Human Services or the Department of Health Care Policy and Financing, such as early intervention services and services for individuals with intellectual or developmental disabilities may apply. These programs and their service providers may also be of assistance to these newborns and their families. The statute references medical providers and specialists so at this time the proposed language focuses on health care services. Through implementation and on-going monitoring, the department will consider if follow-up services can and should include services offered through our sister agencies.

Also note that the on-going monitoring is not included in the definition of follow-up services. Monitoring in the proposed rule is limited to evaluation of the newborn screening program. Other programs such as the Colorado Department of Public Health and Environment's Colorado Responds to Children with Special Needs (CRCSN), the state birth defects registry, monitor information on children diagnosed with conditions in the newborn screen. CRCSN is authorized to conduct population-level health surveillance, including relevant medical record review and examination of risk factors, up to age 3, on cases with these conditions and other birth defects, pursuant to C.R.S. 25-1.5-101 - 25-1.5-105, C.R.S. 25 - 1- 122 and Board of Health Regulations, 6 CCR-1009-7 (State of Colorado Rules and Regulations Pertaining to the Detection, Monitoring, and Investigation of Environmental and Chronic Diseases). Public health monitoring or population health surveillance involves the ongoing collection, analysis, and dissemination of health data to prevent and control disease and injury in a community, as defined by the Centers for Disease Control and Prevention (CDC). In addition to these health surveillance activities, CRCSN also provides parents with information on community resources for their children. It is an unnecessary duplication and expense to extend newborn screening monitoring beyond what is needed to perform effective screening and follow-up services.

To the extent to which the Department performs these services through a contractor, the contract will comport with the Procurement Code, State Fiscal and Personnel rules, and Department policies governing contract monitoring, privacy and data use. As written the proposed rule requires referral services in all screen positive cases as this is directed by the statute.

- 5) Statutory citations, terminology, clarifying edits and formatting to improve readability are proposed throughout the rule. The terms mother and father and replace them gender neutral terms "parent(s)" and "legal guardian(s)."

This rulemaking does not propose new conditions or otherwise modify the current list of conditions included on the newborn screening or second newborn screening panel. The specific criteria to be used by the Board of Health for evaluating new disorders for inclusion in newborn screening are stated in statute, C.R.S. 25-4-1004(1)(c) is unchanged. Pursuant to Section 25-4-1004(1), C.R.S., the Board of Health criteria for adding additional conditions remain:

- (I) The condition for which the test is designed presents a significant danger to the health of the infant or his family and is amenable to treatment;
- (II) The incidence of the condition is sufficiently high to warrant screening;
- (III) The test meets commonly accepted clinical standards of reliability, as demonstrated through research or use in another state or jurisdiction; and
- (IV) The cost-benefit consequences of screening are acceptable within the context of the total newborn screening program.



HB 18-1006 authorized the Department to take preliminary steps such as a space study and cost assessment to determine the viability of adding new conditions. These actions are occurring. In addition, as previously directed by the Board of Health, the Department is developing a methodology that the Department will use to determine whether it should recommend a condition be added. The proposed revisions in this rule establish the structure that will inform that analysis. The proposed rules are predicated on a determination that screening is appropriate based upon state statute or Board of Health rules.

Specific Statutory Authority.

These rules are promulgated pursuant to the following statutes: Sections 25-4-1004 and 25-4-1004.5, C.R.S.

---

#### SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

☒ Yes in part, the bill number is HB18-1006. Rules are ☐ authorized  
☒ required.  
☐ No

Does this rulemaking incorporate materials by reference?

☐ Yes ☐ URL or ☐ Sent to State Publications Library  
☒ No

Does this rulemaking create or modify fines or fees?

☐ Yes  
☒ No

Does the proposed rule create (or increase) a state mandate on local government?

- ☒ No. This rule does not require a local government to perform or increase a specific activity for which the local government will not be reimbursed.
- ☐ No. This rulemaking reduces or eliminates a state mandate on local government.
- ☐ Yes. This rule includes a new state mandate or increases the level of service required to comply with an existing state mandate, and local government will not be reimbursed for the costs associated with the new mandate or increase in service.

The state mandate is categorized as:

- ☐ Necessitated by federal law, state law, or a court order  
☐ Caused by the State's participation in an optional federal program  
☐ Imposed by the sole discretion of a Department  
☐ Other: \_\_\_\_\_

Has an elected official or other representatives of local governments disagreed with this categorization of the mandate? ☐ Yes ☐ No

If yes, please explain why there is disagreement in the categorization.

Please elaborate as to why a rule that contains a state mandate on local government is necessary. NA

REGULATORY ANALYSIS  
for Repeal of Executive Director Second Newborn Screening Rules  
and Amendments to  
5 CCR 1005-4, Newborn Screening and Second Newborn Screening

1. A description of the classes of persons affected by the proposed rule, including the classes that will bear the costs and the classes that will benefit from the proposed rule.

These rules impact Birthing Facilities, Midwives, Reference Laboratories (e.g. Quest, LabCorp), Pediatrician's Offices, Family Medicine Offices, Clinical Specialists currently contracted with CDPHE to provide follow-up services (~20), Patient Advocacy Groups (e.g. March of Dimes, Cure SMA, etc.), Adult Patients with Rare Congenital Disorders, Colorado's Newborns (~67,000/yr), and Parents/Families of Colorado's Newborns

- A. Identify each group of individuals/entities that rely on the rule to maintain their own businesses, agencies or operation, and the size of the group:

Birthing Facilities, Midwives, Reference Laboratories (e.g. Quest, LabCorp), Pediatrician's Offices, Family Medicine Offices.

- B. Identify each group of individuals/entities interested in the outcomes the rule and those identified in #1.A achieve, and if applicable, the size of the group:

Clinical Specialists currently contracted with CDPHE to provide follow-up services (~20), Patient Advocacy Groups (e.g. March of Dimes, Cure SMA, etc.), Adult Patients with Rare Congenital Disorders

- C. Identify each group of individuals/Entities that benefit from, may be harmed by or at-risk because of the rule, and if applicable, the size of the group:

Colorado's Newborns (~67,000), Parents/Families of Colorado's Newborns

2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

- A. For those that rely on the rule to maintain their own businesses, agencies or operations:

Describe the anticipated favorable and non-favorable non-economic outcomes (short-term and long-term), and if known, the likelihood of the outcomes:

The proposed rules modernize the metabolic portion of the newborn screening program. The majority of changes are clarifying and updates to align with the current statute and the current operation of the Colorado Newborn Screening Program.

Prior to HB 18-1006, the Newborn Genetics Cash Fund balance was \$6.3 million. Through HB 18-1006, the General Assembly authorized the Department to increase the current fee from \$92 to \$111.00. The fee adjustment increases the newborn screening portion of the Newborn Genetics Cash Fund by \$1.3 million (The legislation also authorized additional funding for newborn hearing screening; however, that is not included in this rule.) We do not envision any increase in costs for stakeholders. The fee increase supports the newborn screening program generally and funds the activities delineated in HB 18-1006.

The fee increase will support the follow-up services provided by the Department or its designee.

Favorable non-economic outcomes:

Timely screening and follow-up services that bridge the birth to pediatric services benefit the medical providers involved. Pediatricians benefit directly from the follow-up services covered by the newborn screening program, as these services provide immediate access to expert medical advice for families and primary care physicians of affected children.

Unfavorable non-economic outcomes: None expected.

Anticipated financial impact:

Anticipated Costs:	Anticipated Benefits:
<p>Description of costs that must be incurred.</p> <p>None expected.</p> <p>Description of costs that may be incurred.</p> <p>None expected.</p>	<p>Description of financial benefit.</p> <ul style="list-style-type: none"> <li>To the extent clarifying the language improves provider practice and error rates, a cost and times saving may occur.</li> </ul>
<p>Cost or cost range.</p> <p>\$_____None_____ or</p> <p>___ No data available.</p>	<p>Savings or range of savings.</p> <p>\$_____ or</p> <p>_X_ No data available.</p>
<p>Dollar amounts that have not been captured and why: NA</p>	<p>Dollar amounts that have not been captured and why: NA</p>

Local Government Impact: NA

Statement from HB 18-1006 Fiscal Note:

HB 18-1006 authorized the Department to increase the fee to improve the newborn screening program, including follow-up services. An additional \$1.3 million will be generated.

- B. For those that are affected by or interested in the outcomes the rule and those identified in #1.A achieve.

Describe the favorable or unfavorable outcomes (short-term and long-term), and if known, the likelihood of the outcomes:

The proposed rules modernize the metabolic portion of the newborn screening program. The majority of changes are clarifying and updates to align with the current statute and the current operation of the Colorado Newborn Screening Program.

Favorable non-economic outcomes:

Clarifying the existing processes and establishing the standards for follow-up services is of interest to entities that may serve as the Department's designee and organizations that advocate for patients and families.

Unfavorable non-economic outcomes: None expected.

Any anticipated financial costs monitored by these individuals/entities?

The Department has reviewed the language for feasibility and policy direction but there are no anticipated cost increases.

Any anticipated financial benefits monitored by these individuals/entities?

Greater operational efficiency of the metabolic portion of the newborn screening program might lower costs for these individuals due to less wasted activity, e.g. fewer requests tied to unsatisfactory specimens.

- C. For those that benefit from, are harmed by or are at risk because of the rule, the services provided by individuals identified in #1.A, and if applicable, the stakeholders or partners identified in #1.B.

Describe the favorable or unfavorable outcomes (short-term and long-term), and if known, the likelihood of the outcomes:

By defining follow-up in rule, the department is providing clarity about the boundary between newborn screening services and traditional medical services. These rules help to explain the reporting of results according to whether the results are screen negative, non-urgent screen positive, or urgent screen positive results and ensure timely processing for newborns and their families.

Financial costs to these individuals/entities:

No new costs are expected for these entities and individuals.

Financial benefits to or cost avoidance for these individuals/entities:

Pediatricians benefit directly from the follow-up contracts covered by the newborn screening program, as these contracts provide immediate access to expert medical advice for families and primary care physicians of affected children.

3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.
  - A. Anticipated CDPHE personal services, operating costs or other expenditures:

The newborn screening program statutory mandates are better resourced with the increased appropriation. The rule elaborates and establishes standards related to those mandates; the rule does not drive additional costs.

The newborn screening fee was increased from \$92/child to \$111/child on July 1, 2018. This was the first fee increase in seven fiscal years. The fee is not established by the Board of Health, but is set administratively through the Executive Director. This

rulemaking does not include fees or fee increases. The Department will continue to monitor the fee as it evaluates the programmatic infrastructure and costs associated with improving or expanding the services offered.

- B. Anticipated personal services, operating costs or other expenditures by another state agency:

The fiscal note to HB 18-1006 acknowledged that the Department of Health Care Policy and Financing will have costs associated with increased capitation payments (FY19 \$117,900; FY20 \$123,200; FY21 \$139,300) for Medicaid and the Children's Basic Health Plan (CHP+).

It was not anticipated that HB 18-1006 would increase the number of Colorado infants identified as persons with an intellectual or developmental disability and thus, no additional costs were identified in this area.

Anticipated Revenues for another state agency:

These costs are funded through a variety of funding streams and are to be addressed through the annual budget process.

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Check mark all that apply:

- ☒ Inaction is not an option because the statute requires rules be promulgated.
- ☒ The proposed revisions are necessary to comply with federal or state statutory mandates, federal or state regulations, and department funding obligations.
- ☒ The proposed revisions appropriately maintain alignment with other states or national standards.
- ☒ The proposed revisions implement a Regulatory Efficiency Review (rule review) result, or improve public and environmental health practice .
- ☒ The proposed revisions implement stakeholder feedback.
- ☒ The proposed revisions advance the following CDPHE Strategic Plan priorities:

Goal 1, Implement public health and environmental priorities  
 Goal 2, Increase Efficiency, Effectiveness and Elegance  
 Goal 3, Improve Employee Engagement  
 Goal 4, Promote health equity and environmental justice  
 Goal 5, Prepare and respond to emerging issues, and  
 Comply with statutory mandates and funding obligations

Strategies to support these goals:

- ☐ Substance Abuse (Goal 1)
- ☐ Mental Health (Goal 1, 2, 3 and 4)
- ☐ Obesity (Goal 1)
- ☐ Immunization (Goal 1)
- ☐ Air Quality (Goal 1)
- ☐ Water Quality (Goal 1)
- ☒ Data collection and dissemination (Goal 1, 2, 3, 4 and 5)
- ☐ Implements quality improvement or a quality improvement project (Goal 1, 2, 3 and 5)

- \_\_\_ Employee Engagement (career growth, recognition, worksite wellness) (Goal 1, 2 and 3)
- \_\_\_ Incorporate health equity and environmental justice into decision-making (Goal 1, 3 and 4)
- \_\_\_ Establish infrastructure to detect, prepare and respond to emerging issues (Goal 1, 2, 3, 4, and 5)

\_\_\_ Other favorable and unfavorable consequences of inaction:

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

Rulemaking is proposed when it is the least costly method or the only statutorily allowable method for achieving the purpose of the statute. The specific revisions proposed in this rulemaking were developed in conjunction with stakeholders. The benefits, risks and costs of these proposed revisions were compared to the costs and benefits of other options. The proposed revisions provide the most benefit for the least amount of cost, are the minimum necessary or are the most feasible manner to achieve compliance with statute. The proposed rules for follow-up services afford the Department some discretion in designing and managing those services.

6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.

See the responses at #4 and #5 above.

7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.

The program's laboratory information management system was used to estimate the number of newborns screened by the program.

The Department solicited feedback at all six of the current follow-up clinics (hemoglobinopathies, congenital hypothyroidism, congenital adrenal hyperplasia, cystic fibrosis, severe combined immunodeficiency, and inherited metabolic disorders). The Department has monitored the feedback as these entities have subject matter expertise and a commitment to newborn screening; however, as entities that receive funding to perform these services, there is a conflict or perceived conflict of interest. Their expertise informed the proposed rules.

The Department also reached out to a neonatologist in Colorado Springs, and a pediatrician in Grand Junction.

The Department has also used the survey results to open a dialogue with birthing facilities and individuals involved in births that occur outside of a birth facility. Outreach to this community will continue. The survey results also informed the proposed rule language.

The Department received written feedback from Children's Hospital of Colorado and the Colorado Midwives Association regarding our originally proposed rules. The current proposed rules reflect significant changes made to incorporate this input.

The Department has also reviewed the following documents:

1. Clinical and Laboratory Standards Institute (CLSI). Newborn Screening Follow-up; Approved Guideline—Second Edition. CLSI document NBS02-A2 (ISBN 1-56238-875-4)

- [Print]). Clinical and Laboratory Standards Institute, 950 West Valley Road, Suite 2500, Wayne Pennsylvania 19087.
2. APHL Presentation by Dr. Susan Tanksley
  3. “Timeliness of Newborn Screening: Recommendations ”  
<https://www.aphl.org/conferences/proceedings/Documents/2015/Annual-Meeting/26Tanksley.pdf>
  4. Society for Inherited Metabolic Disorders “SIMD Position Statement: Identifying abnormal newborn screens requiring immediate notification of the health care provider.”  
<https://www.simd.org/Issues/SIMD%20NBS%20Critical%20Conditions%20policy%20statement.pdf>
  5. Dr. Joe Orsini, “Overview of Cutoff Determinations and Risk Assessment Methods used in Dried Blood Spot Newborn Screening.” ACHDNC, February 8, 2018.

**STAKEHOLDER ENGAGEMENT**  
for Repeal of Executive Director Second Newborn Screening Rules  
and Amendments to  
5 CCR 1005-4, Newborn Screening and Second Newborn Screening

State law requires agencies to establish a representative group of participants when considering to adopt or modify new and existing rules. This is commonly referred to as a stakeholder group.

**Early Stakeholder Engagement:**

The following individuals and/or entities were invited to provide input and included in the development of these proposed rules:

<b>Organization</b>	<b>Representative</b>
Hemoglobinopathies Follow-up Clinic	Donna Holstein & Dr. Kathy Hassell
Congenital Hypothyroidism Follow-up Clinic	Dr. Aristides Maniatis
Congenital Adrenal Hyperplasia Follow-up Clinic	Dr. Jennifer Barker
Children's Hospital of Colorado/Cystic Fibrosis Follow-up Clinic	Dr. Scott Sagel
Children's Hospital/Inherited Metabolic Disease Follow-up Clinic	Dr. Peter Baker
Children's Hospital/Severe Combined Immunodeficiency Follow-up Clinic	Dr. Elena Hsieh
Pediatrician (Western slope region)	Dr. Patrice Whistler
Neonatologist (Colorado Springs)	Dr. Bob Kiley
Colorado Hospital Association	Amber Burkhardt
Colorado Midwives Association	Melissa Sexton
Children's Hospital of Colorado	Ellen Stern
Laboratory Services Division staff	Dr. Emily Travanty Olga Ivanova Greg Bonn Dr. Sudhindra Rao Kyle Senger
Mother of Child with MPS-1	Christine Tippet
Wyoming DoH	Christina Taylor
Mother of Child with MCADD	Kay Kelly
Children's Hospital/ Inherited Metabolic Disease Follow-up Clinic	Dr. Janet Thomas
Biogen	Ritchard Engelhardt
Novartis	Barbara Boner
Children's Hospital/Severe Combined Immunodeficiency Follow-up Clinic	Dr. Cullen Dutmer
Patient	Lori Wise
University of Colorado Hospital (UCSH)	Dr. Mary Kohn

A variety of early stakeholder engagements were conducted. These events include activities tied to contract monitoring, as well as community outreach events such as a series of peer-to-peer networking events in August 2018. The Department also met with newborn screening stakeholders on September 25, 2018. Feedback from individual contracted specialists was also



sought to ensure the standards established in the rule could be implemented if the Department sought for the services to be provided by a contractor. Written feedback from Children's Hospital of Colorado and the Colorado Midwives Association is incorporated into the proposed rules.

The Department will continue to engage stakeholders. Additional feedback is anticipated. The Department will continue to meet with stakeholders in October and November. All feedback will be reviewed and incorporated into the packet if the Department determines it is appropriate to do so.

Stakeholder Group Notification

The stakeholder group was provided notice of the rulemaking hearing and provided a copy of the proposed rules or the internet location where the rules may be viewed. Notice was provided prior to the date the notice of rulemaking was published in the Colorado Register (typically, the 10<sup>th</sup> of the month following the Request for Rulemaking).

☒ Not applicable. This is a Request for Rulemaking Packet. Notification will occur if the Board of Health sets this matter for rulemaking.

☐ Yes.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

The Department has modified the rule language based upon its internal review, HB 18-1006 and external feedback received. The Department will continue to engage stakeholders in the coming weeks. If major issues are encountered, the Department is committed to working through them with stakeholders.

Please identify the determinants of health or other health equity and environmental justice considerations, values or outcomes related to this rulemaking.

This rulemaking and the education and outreach the Department will perform to ensure named submitters and birthing facilities are informed of the regulatory requirements and resources ensure timely newborn screening. Follow-up services link families to care and bridge the birth to short-term and long-term services and supports. CDPHE provides follow-up services for hemoglobinopathies, a group of conditions that frequently affect African Americans.

Overall, after considering the benefits, risks and costs, the proposed rule:

Select all that apply.

	Improves behavioral health and mental health; or, reduces substance abuse or suicide risk.	X	Reduces or eliminates health care costs, improves access to health care or the system of care; stabilizes individual participation; or, improves the quality of care for unserved or underserved populations.
	Improves housing, land use, neighborhoods, local infrastructure, community services, built environment, safe physical spaces or transportation.		Reduces occupational hazards; improves an individual's ability to secure or maintain employment; or, increases stability in an employer's workforce.
	Improves access to food and healthy food options.		Reduces exposure to toxins, pollutants, contaminants or hazardous substances; or ensures the safe application of radioactive material or chemicals.
X	Improves access to public and environmental health information; improves the readability of the rule; or, increases the shared understanding of roles and responsibilities, or what occurs under a rule.		Supports community partnerships; community planning efforts; community needs for data to inform decisions; community needs to evaluate the effectiveness of its efforts and outcomes.
	Increases a child's ability to participate in early education and educational opportunities through prevention efforts that increase protective factors and decrease risk factors, or stabilizes individual participation in the opportunity.		Considers the value of different lived experiences and the increased opportunity to be effective when services are culturally responsive.
X	Monitors, diagnoses and investigates health problems, and health or environmental hazards in the community.	X	Ensures a competent public and environmental health workforce or health care workforce.
	Other: _____ _____		Other: _____ _____

## DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

### Laboratory Services Division

## NEWBORN SCREENING AND SECOND NEWBORN SCREENING

### 5 CCR 1005-4

---

#### SECTION 1: AUTHORITY AND DEFINITIONS

- 1.1 THESE RULES AND REGULATIONS ARE ESTABLISHED ~~u~~Under the authority contained in Sections 25-4-801 through 25-4-804 and 25-4-10014 AND ~~through 25-4-10064 (not including Section 25-4-1004.7) C.R.,S. (1998), the following rules and regulations are established.~~
- 1.2 Definitions: The following terms, whenever used in or referred to in these regulations, shall have the following respective meanings, unless a different meaning clearly appears from the context:
- "BIRTHING FACILITY" MEANS A GENERAL HOSPITAL OR BIRTHING CENTER LICENSED OR CERTIFIED PURSUANT TO SECTION 25-1.5-103.
- "Department" shall mean the Colorado Department of Public Health and Environment.
- "EXCEPTIONAL CIRCUMSTANCES" SHALL MEAN CIRCUMSTANCES WITHIN 364 DAYS AFTER BIRTH, WHERE THE DEPARTMENT, AT ITS SOLE DISCRETION, MAY DETERMINE TIMELY COLLECTION OF A SPECIMEN WAS NOT FEASIBLE BUT SCREENING REMAINS APPROPRIATE. THIS INCLUDES BUT IS NOT LIMITED TO OBTAINING SAMPLES FOR CHILDREN BORN OUTSIDE THE UNITED STATES WHO RELOCATE TO COLORADO THROUGH THE ADOPTION PROCESS OR A REFUGEE RESETTLEMENT PROGRAM.
- "FOLLOW-UP SERVICES" SHALL MEAN 1) REPEAT OR CONFIRMATORY TESTING IF CLINICALLY NECESSARY AS DETERMINED BY THE DEAPRTMENT, OR 2) FOR NEWBORNS THAT SCREEN POSITIVE, INITIALLY OR THROUGH REPEAT OR CONFIRMATORY TESTING, REFERRAL SERVICES TO CONNECT NEWBORNS TO THE HEALTHCARE SYSTEM FOR THE PURPOSE OF RECEIVING A DIAGNOSIS, AN INTERVENTION, OR SPECIALTY CARE. FOLLOW-UP SERVICES DOES NOT INCLUDE ANY HEALTHCARE SYSTEM SERVICES.
- "Initial ~~N~~newborn ~~S~~screening ~~S~~specimen" shall mean ABSENT EXCEPTIONAL CIRCUMSTANCE, A specimen collected from a newborn prior to discharge BETWEEN 24 AND 48 HOURS AFTER BIRTH AND TO THE EXTENT FEASIBLE, PRIOR TO ANY BLOOD TRANSFUSION ~~but in all cases within 48 hours after birth for the purpose of conducting screening tests.~~
- "Laboratory" shall mean the Colorado Department of Public Health and Environment Laboratory.

“NAMED SUBMITTER” SHALL MEAN THE ENTITY OR INDIVIDUAL IDENTIFIED AS THE SUBMITTER OF THE SPECIMEN ON THE DEMOGRAPHIC SLIP ATTACHED TO THE BLOOD SPOT CARD.

“NEWBORN” SHALL MEAN A CHILD UNDER 28 DAYS OF AGES. NEWBORNS MAY BE REFERRED TO AS “NEONATES.”

“NON-URGENT SCREEN POSITIVE RESULT” SHALL MEAN AN INITIAL NEWBORN SCREENING SPECIMEN RESULT ASSOCIATED WITH ANY RISK LEVEL FOR A TIME-SENSITIVE CONDITION OR A MODERATE RISK LEVEL FOR A TIME-CRITICAL CONDITION, THEREBY ALLOWING TIME FOR COLLECTION AND TESTING OF A SECOND NEWBORN SCREENING SPECIMEN.

“SCREEN NEGATIVE” SHALL MEAN A RESULT FROM A SCREENING TEST THAT DOES NOT INDICATE THE PRESENCE OF THE SCREENED CONDITION.

“SCREEN POSITIVE” SHALL MEAN A RESULT FROM SCREENING TEST THAT INDICATES SOME LIKELIHOOD OF THE SCREENED CONDITION(S) BEING PRESENT, AND FURTHER INVESTIGATION OR TESTING OF THE NEWBORN IS REQUIRED.

“SECOND NEWBORN SCREENING SPECIMEN” SHALL MEAN A SPECIMEN COLLECTED FROM A NEWBORN BETWEEN 8 AND 14 DAYS AFTER BIRTH FOR THE PURPOSE OF CONDUCTING SECOND SCREENING TESTS.

“TIME-CRITICAL CONDITION” SHALL MEAN A CONDITION IDENTIFIED BY THE DEPARTMENT TO BE ASSOCIATED WITH EARLY ONSET OF SEVERE SYMPTOMS INCLUDING DEATH OR INTELLECTUAL OR OTHER PERMANENT DISABILITIES.

“TIME-SENSITIVE CONDITION” SHALL MEAN A CONDITION IDENTIFIED BY THE DEPARTMENT NOT TO BE ASSOCIATED WITH EARLY ONSET OF SEVERE SYMPTOMS INCLUDING DEATH OR INTELLECTUAL OR OTHER PERMANENT DISABILITIES.

“UNSATISFACTORY SPECIMEN” SHALL MEAN A SPECIMEN FOR WHICH ALL TIERS OF TESTING PERFORMED WITHIN THE LABORATORY COULD NOT BE COMPLETED FOR ANY REASON, SUCH AS THE QUALITY OF THE SPECIMEN OR THE AMOUNT OF SPECIMEN PROVIDED.

“URGENT SCREEN POSITIVE RESULT” SHALL MEAN A POSITIVE SCREENING RESULT THAT SUGGESTS A HIGH LIKELIHOOD OF A TIME-CRITICAL CONDITION.

## SECTION 2: NEWBORN SCREENING REQUIREMENTS FOR NAMED SUBMITTERS

### 2.1. HYGIENIC COLLECTION CONDITIONS

WORK AREAS USED TO COLLECT SAMPLES WILL BE CLEAN AND SANITARY. INDIVIDUALS COLLECTING SAMPLES WILL FOLLOW HYGIENIC PRACTICES INCLUDING HANDWASHING.

### 2.2 SPECIMEN COLLECTION, HANDLING, AND SUBMISSION

- 2.2.1 Births in BIRTHING FACILITIES ~~Institutions~~: The blood specimens of newborns born in BIRTHING FACILITIES ~~institutions~~ and all other specimens taken in conformity with the law and these regulations will be sent to the Laboratory for testing. PURSUANT TO SECTION 25-4-1004(1)(B), C.R., S., THE BIRTHING FACILITY WHERE THE INFANT IS BORN SHALL FORWARD ALL SPECIMENS TO THE LABORATORY.

~~Follow up specimens from newborns with positive screening tests will be obtained and tested~~ PURSUANT TO SECTION 25-4-1004(2), C.R., S., THE BIRTHING FACILITY WHERE THE INFANT IS BORN SHALL ALSO BE RESPONSIBLE FOR HELPING TO CONNECT INFANTS WHO SCREEN POSITIVE TO FOLLOW-UP SERVICES TO INCLUDE AIDING IN THE COLLECTION OF ADDITIONAL SPECIMENS FOR UNSATISFACTORY SPECIMENS OR SPECIMENS WITH EQUIVOCAL RESULTS, AS WELL AS COLLECTION OF ADDITIONAL SPECIMENS FOR RESOLUTION OF NON-URGENT AND URGENT SCREEN POSITIVE RESULTS, as necessary for proper diagnosis.

- 2.2.1.1 ~~The hospital or institution or the chief medical staff officer or other person in charge thereof~~ BIRTHING FACILITY will cause an initial newborn screening specimen to be obtained from every newborn born therein ~~as late as possible before discharge, but no later than 48 hours of age.~~

- 2.2.1.2 The specimen shall consist of capillary blood collected by heel puncture or alternate method authorized by the Laboratory, directly upon special blotter paper furnished by the Laboratory.

THE INITIAL NEWBORN SCREENING SPECIMEN SHALL BE COLLECTED AT 24 HOURS OF AGE, BUT NO LATER THAN 48 HOURS OF AGE.

HEEL PUNCTURE SAMPLING WILL OCCUR IN A MANNER THAT MAINTAINS THE HEALTH AND SAFETY OF THE NEWBORN AND INDIVIDUAL COLLECTING THE SAMPLE; ENSURE PROPER LABELING AND PREPARATION OF THE SPECIMEN FOR DELIVERY, AND ALLOW FOR ACCURATE TEST RESULTS AND PROPER DIAGNOSIS.

All circles shall be saturated with blood from one side of the blotter only. The specimen submitter will provide, on the attached form, all information requested by the Laboratory.

The specimens, WILL BE after air DRIED FOR THREE TO FOUR HOURS. SPECIMENS, AFTER AIR drying, will be forwarded to the Laboratory within 24 hours of collection, by courier or overnight delivery if available. SPECIMENS WILL BE SUBMITTED IN THE FORM AND MANNER REQUIRED BY THE DEPARTMENT.

2.2.1.3 If the newborn is to receive a blood transfusion, then the specimen for newborn screening is to be obtained prior to this procedure. IF A SPECIMEN IS COLLECTED AFTER TRANSFUSION, THE COLLECTION FORM WILL BE MARKED APPROPRIATELY TO INDICATE TRANSFUSION OCCURRED.

2.2.2 Births Outside BIRTHING FACILITIES Institutions: The physician, nurse REGISTERED midwife, or other health professional attending a birth outside a BIRTHING FACILITY hospital, shall be responsible for the collections and forwarding of the specimen described in 2.2.1.2 above. In the absence of a health professional, any other person attending the birth, or in the absence of any person so attending, the PARENT(S) father or mother LEGAL GUARDIAN(S), or in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred shall be responsible.

~~1.4 Testing and Reporting: The prescribed tests will be initiated by the Laboratory within 24 hours of receipt of the specimen, weekends and holidays excepted. The Laboratory shall report as follows:~~

~~1.4.1 Reports of normal test results will be sent to the submitting agency within seven working days.~~

~~1.4.2 Abnormal test results will be reported immediately by telephone to the physician of record and to designated consultants. In case of inability to identify or locate a physician of record, the abnormal test result will be reported to the hospital or submitting agency which originated the specimen, or, if the birth did not occur in a health facility, to the father or mother.~~

~~1.4.3 Unsatisfactory specimens or specimens with equivocal results will be reported immediately to the submitting agency which originated the specimen with an explanation of the results. The submitting agency responsible for the newborn's care at the time of the report will cause another specimen to be forwarded at the appropriate time.~~

1.4.4.2.3. CARE COORDINATION

The submitting agency NAMED SUBMITTER that originated the specimen shall forward the Nnewborn Sscreening SCREEN NEGATIVE AND SCREEN POSITIVE results PRODUCED

BY THE LABORATORY PURSUANT TO RULE 4 to the health care provider responsible for the newborn's care within the time frame of 1.4.1 and 1.4.3 above SEVEN DAYS FOR SCREEN NEGATIVE RESULTS, WITHIN 72 HOURS FOR NON-URGENT SCREEN POSITIVE RESULTS AND WITHIN 24 HOURS FOR URGENT SCREEN POSITIVE RESULTS.

#### ~~1.5 Quality Control and Education~~

~~1.5.1 The Laboratory shall have available for review a written quality assurance program plan covering all aspects of laboratory activity.~~

~~1.5.2 The Laboratory shall make available educational materials and training concerning specimen collection to all submitting agencies.~~

#### 62.4 List of Conditions for Newborn Screening

The Laboratory shall conduct screening tests for the following conditions:

- 2.4.1 Phenylketonuria
- 2.4.2 Congenital Hypothyroidism
- 2.4.3 Hemoglobinopathies
- 2.4.4 Galactosemia
- 2.4.5 Cystic Fibrosis
- 2.4.6 Biotinidase Deficiency
- 2.4.7 Congenital Adrenal Hyperplasia
- 2.4.8 Medium Chain Acyl-CoA dehydrogenase deficiency
- 2.4.9 Very Long Chain Acyl-CoA dehydrogenase deficiency
- 2.4.10 Long-Chain L-3-Hydroxy Acyl-CoA dehydrogenase deficiency
- 2.4.11 Trifunctional protein deficiency
- 2.4.12 Carnitine Acyl-carnitine translocase deficiency
- 2.4.13 Short Chain Acyl-CoA dehydrogenase deficiency
- 2.4.14 Carnitine palmitoyltransferase II deficiency
- 2.4.15 Glutaric acidemia Type 2
- 2.4.16 Arginosuccinic acidemia



- 2.4.17 Citrullinemia
- 2.4.18 Tyrosinemia
- 2.5.19 Hypermethionemia
- 2.4.20 Maple Syrup urine disease
- 2.4.21 Homocystinuria
- 2.4.22 Isovaleric academia
- 2.4.23 Glutaric acidemia Type 1
- 2.5.24 3-hydroxy-3-methylglutaryl-CoA Lyase deficiency
- 2.4.25 Multiple Carboxylase deficiency
- 2.4.26 3-methylcrotonyl-CoA carboxylase deficiency
- 2.4.27 3-methylglutaconic aciduria
- 2.4.28 Methylmalonic acidemias
- 2.4.29 Propionic academia
- 2.4.30 beta-Ketothiolase deficiency
- 2.4.31 Carnitine uptake defect
- 2.4.32 Arginase deficiency
- 2.4.33 Malonic academia
- 2.4.34 Carnitine palmitoyltransferase deficiency 1A
- 2.4.35 Severe Combined Immunodeficiency

~~RULES AND REGULATIONS OF THE EXECUTIVE DIRECTOR COLORADO DEPARTMENT OF  
PUBLIC HEALTH AND ENVIRONMENT  
IMPLEMENTATION OF SECOND NEWBORN SCREENING~~

~~1.1 Under the authority contained in Section 25-4-1004.5(3) C.R.S., the following Rules and Regulations are established.~~

~~1.2 Definitions~~

~~“Department” shall mean the Colorado Department of Public Health and Environment.  
“Executive Director” shall mean the executive director of the Colorado Department of Public Health and Environment.~~

~~“Laboratory” shall mean the Colorado Department of Public Health and Environment Laboratory.~~

~~“Initial newborn screening specimen” shall mean specimen collected from a newborn prior to discharge, but in all cases within 48 hours after birth for the purpose of conducting screening tests.~~

~~“Second newborn screening specimen” shall mean a specimen collected from a newborn between eight and 14 days after birth, but in no case less than 72 hours or greater than 30 days after birth, for the purpose of conducting screening tests.~~

SECTION 3: SECOND NEWBORN SCREENING REQUIREMENTS FOR NAMED SUBMITTERS

3.1. HYGIENIC COLLECTION CONDITIONS

WORK AREAS USED TO COLLECT SAMPLES WILL BE CLEAN AND SANITARY. INDIVIDUALS COLLECTING SAMPLES WILL FOLLOW HYGIENIC PRACTICES INCLUDING HANDWASHING.

3.2 NOTIFICATION, SPECIMEN COLLECTION, HANDLING AND DELIVERY

3.2.1 NOTIFICATION

~~1.3 Procedures~~

~~The parent(s) or other legal guardian(s) of the newborn shall be advised of the necessity of the THAT A second newborn screening test IS REQUIRED FOR CONDITIONS IDENTIFIED IN RULE 3.3.~~

3.2.1 Births in BIRTHING FACILITIES Institutions: It shall be the responsibility of the hospital or institution or the chief medical staff officer or other person in charge thereof BIRTHING FACILITY to advise, verbally and in writing, such as by written information made available from the Department, the parent(s) or other legal guardian(s) of the newborn that it is necessary to have a second newborn screening test performed.

3.2.2 Births outside BIRTHING FACILITIES Institutions: It shall be the responsibility of the physician, nurse midwife, lay REGISTERED

midwife, or other health professional attending a birth outside a BIRTHING FACILITY hospital to advise, verbally and in writing, such as by written information made available from the Department, the parent(s) or other legal guardian(s) of the newborn, of the necessity of the second newborn screening.

### 3.2.2 COLLECTION

~~1.3.2~~ 3.2.2.1 The attending health care provider shall collect or require the specimen be collected from all newborns at the first post partum A NEWBORN WELL CHILD appointment BETWEEN 8 AND 14 DAYS AFTER BIRTH, but in no case less than 72 hours or greater than 30 days after birth.

The specimen shall consist of capillary blood collected by heel puncture or alternate method authorized by the Laboratory, directly upon special blotter paper furnished by the Laboratory.

HEEL PUNCTURE SAMPLING WILL OCCUR IN A MANNER THAT MAINTAINS THE HEALTH AND SAFETY OF THE NEWBORN AND INDIVIDUAL COLLECTING THE SAMPLE; ENSURE PROPER LABELING AND PREPARATION OF THE SPECIMEN FOR DELIVERY, AND ALLOW FOR ACCURATE TEST RESULTS AND PROPER DIAGNOSIS.

All circles shall be saturated with blood from one side of the blotter only. The submitter will provide, on the attached form, all information requested by the Laboratory.

The specimens, ~~after drying~~ WILL BE air DRIED FOR THREE TO FOUR HOURS. The Sspecimens, after air drying, shall be forwarded to the Laboratory within 24 hours of collection by first class mail, courier, or overnight delivery. SPECIMENS WILL BE SUBMITTED IN THE FORM AND MANNER REQUIRED BY THE DEPARTMENT.

~~1.4~~ Testing and Reporting: The prescribed tests will be initiated by the Laboratory within 24 hours of receipt of the specimen, weekends and holidays excepted. The Laboratory shall report as follows:

~~1.4.1~~ Reports of normal test results will be sent to the submitting agency within seven working days.

~~1.4.2~~ Abnormal test results will be reported immediately by telephone to the physician of record and to designated consultants. In case of inability to identify or locate a physician of record, the abnormal test result will be reported to the submitting agency which originated the specimen, or, if the birth did not occur in a health facility, to the father or mother.

~~1.4.3~~ Unsatisfactory specimens or specimens with equivocal results will be reported immediately to the submitting agency which originated the specimen with an explanation of the results. The health care provider responsible for the

~~newborn's care at the time of the report will cause another specimen to be forwarded at the appropriate time.~~

~~1.4.4 The submitting agency that originated the specimen shall forward the newborn screening results to the health care provider responsible for the newborn's care.~~

#### ~~1.5 Quality Control and Education~~

~~1.5.1 The Laboratory shall have available for review a written quality assurance program plan covering all aspects of testing and reporting second specimens.~~

~~1.5.2 The Laboratory shall make available educational materials and training concerning specimen collection to submitting agencies.~~

3.2.2.2 SECTION 25-4-1004.5(3)(b)(IV), C.R.S., ALLOWS EXCEPTIONS TO SECOND SCREENING SPECIMEN COLLECTION. SECOND SCREENING SPECIMEN COLLECTION IS NOT REQUIRED FOR THE CONDITIONS IDENTIFIED AT 3.3.4, 3.3.5 AND 3.3.6 UNLESS: AN UNSATISFACTORY SPECIMEN WAS SUBMITTED FOR FIRST SCREEN TESTING; AN ABNORMAL RESULT WAS OBTAINED ON FIRST SCREEN TESTING, OR; THERE IS NO RECORD OF A SATISFACTORY FIRST SCREEN SPECIMEN SUBMISSION.

### 3.3 List of Conditions for Second Newborn Screening

~~4.6.4~~ The Laboratory shall conduct screening tests for the following conditions:

- 3.3.1 Phenylketonuria
- 3.3.2 Congenital Hypothyroidism
- 3.3.3 Hemoglobinopathies
- 3.3.4 Galactosemia 4
- 3.3.5 Cystic Fibrosis 4
- 3.3.6 Biotinidase Deficiency 4
- 3.3.7 Congenital Adrenal Hyperplasia

~~1) These disorders need not be tested again unless:~~

~~a) an unsatisfactory specimen was submitted for the first screen testing, or~~

~~b) an abnormal result was obtained on the first screen testing, or~~

~~c) no record of a satisfactory first screen specimen submission can be ascertained.~~

SECTION 4: LABORATORY TESTING, REPORTING AND FOLLOW-UP SERVICES FOR NEWBORN SCREENING AND SECOND NEWBORN SCREENING

- 4.1 TESTS WILL BE INITIATED BY THE LABORATORY IN THE NEXT DAILY BATCH OF SPECIMEN PROCESSING AFTER RECEIPT OF THE SPECIMEN WITH THE LABORATORY OPERATING AT LEAST SIX (6) DAYS PER WEEK.

RESULTS WILL BE SENT TO THE NAMED SUBMITTER FOR NEWBORN SCREENING AND FOR SECOND NEWBORN SCREENING. RESULTS WILL BE REPORTED IN A MANNER AND ON A TIMELINE CONSISTENT WITH THE URGENCY OF INTERVENTION.

- 4.1.1 REPORTS OF SCREEN NEGATIVE TEST RESULTS WILL BE SENT WITHIN SEVEN WORKING DAYS.

- 4.1.2 AN ATTEMPT TO REPORT URGENT RESULTS WILL BE MADE IMMEDIATELY, BUT IN NO CASE LONGER THAN 24 HOURS. REPORTING MAY OCCUR THROUGH THE DEPARTMENT OR ITS DESIGNEE. ATTEMPTS TO REPORT URGENT RESULTS WILL CONTINUE FOR UP TO SIX MONTHS.

- 4.1.2.1 IF A DESIGNEE IS UTILIZED BY THE DEPARTMENT, THE DESIGNEE MAY RECEIVE IDENTIFYING PATIENT INFORMATION, PROTECTED HEALTH INFORMATION, NAMED SUBMITTER INFORMATION AND ATTENDING HEALTH CARE PROVIDER INFORMATION TO THE EXTENT NECESSARY TO PERFORM THESE DUTIES AND IN THE MANNER AUTHORIZED BY LAW.

- 4.1.3 AN ATTEMPT TO REPORT NON-URGENT RESULTS WILL BE MADE IMMEDIATELY, BUT IN NO CASE LONGER THAN 72 HOURS. REPORTING MAY OCCUR THROUGH THE DEPARTMENT OR ITS DESIGNEE. ATTEMPTS TO REPORT NON-URGENT RESULTS WILL CONTINUE FOR UP TO SIX MONTHS.

- 4.1.3.1 IF A DESIGNEE IS UTILIZED BY THE DEPARTMENT, THE DESIGNEE MAY RECEIVE IDENTIFYING PATIENT INFORMATION, PROTECTED HEALTH INFORMATION, NAMED SUBMITTER INFORMATION AND ATTENDING HEALTH CARE PROVIDER INFORMATION TO THE EXTENT NECESSARY TO PERFORM THESE DUTIES AND IN THE MANNER AUTHORIZED BY LAW.

- 4.1.4 AN ATTEMPT TO REPORT UNSATISFACTORY SPECIMENS OR SPECIMENS WITH EQUIVOCAL RESULTS WILL BE MADE IMMEDIATELY, BUT IN NO CASE LONGER THAN 48 HOURS.

- 4.2 FOLLOW-UP SERVICES

THE FOLLOWING RULES APPLY TO FOLLOW-UP SERVICES, WHILE RECOGNIZING THAT FAMILY PARTICIPATION IN THE FOLLOW-UP SUPPORT AND ASSISTANCE SERVICES IS VOLUNTARY.

#### 4.2.1 TIMEFRAME FOR INITIATING SERVICES

4.2.1.1 FOR URGENT POSITIVE SCREEN RESULTS, FOLLOW-UP SERVICES WILL BE INITIATED WITHIN FOUR HOURS OR THE CLINICALLY-RELEVANT TIMEFRAME AUTHORIZED BY THE DEPARTMENT TO PREVENT DEATH OR INTELLECTUAL OR OTHER PERMANENT DISABILITIES.

4.2.1.2 FOR NON-URGENT POSITIVE SCREEN RESULTS, FOLLOW-UP SERVICES WILL BE INITIATED WITHIN A CLINICALLY-RELEVANT TIMEFRAME TO PREVENT DEATH OR INTELLECTUAL OR OTHER PERMANENT DISABILITIES. WHEN REQUIRED BY THE DEPARTMENT, FOLLOW-UP SERVICES WILL BEGIN WITH REPEAT OR CONFIRMATORY TESTING.

#### 4.2.1 REPEAT OR CONFIRMATORY TESTING

REPEAT OR CONFIRMATORY TESTING WILL OCCUR WHEN CLINICALLY NECESSARY AS DETERMINED BY THE DEPARTMENT. IF, THROUGH REPEAT OR CONFIRMATORY TESTING, THE NEWBORN SCREENING RESULT IS SCREEN NEGATIVE, FOLLOW-UP SERVICES WILL BE DISCONTINUED AFTER COMMUNICATING THE RESULT.

#### 4.2.3 TIMEFRAME FOR PROVIDING REFERRAL SERVICES

REFERRALS TO SPECIALISTS WILL OCCUR WITHIN THE FIRST 27 DAYS OF LIFE. AT ITS DISCRETION, THE DEPARTMENT MAY EXTEND FOLLOW-UP SERVICES BEYOND 27 DAYS OF LIFE WHEN REPEAT OR CONFIRMATORY TESTING, DIAGNOSIS, INTERVENTIONS HAVE CREATED NECESSARY DELAYS TO THE DEPARTMENT'S ABILITY TO PROVIDE REFERRAL SERVICES. IN NO INSTANCE WILL FOLLOW-UP SERVICES CONTINUE BEYOND 180 DAYS OF THE CHILD'S BIRTH.

#### 4.2.4 IF A DESIGNEE IS UTILIZED BY THE DEPARTMENT TO PERFORM FOLLOW-UP SERVICES, THE DESIGNEE MAY RECEIVE IDENTIFYING PATIENT INFORMATION, PROTECTED HEALTH INFORMATION, NAMED SUBMITTER INFORMATION AND ATTENDING HEALTH CARE PROVIDER INFORMATION TO THE EXTENT NECESSARY TO PERFORM THESE DUTIES AND IN THE MANNER AUTHORIZED BY LAW.

#### 4.2.5 MONITORING PARTICIPATION IN FOLLOW-UP SERVICES

THE DEPARTMENT SHALL MONITOR:

- 4.2.5.1 THE NUMBER OF NEWBORNS WITH A POSITIVE SCREEN RESULT WHO OPT TO NOT PARTICIPATE IN FOLLOW-UP SERVICES;
  - 4.2.5.2 THE NUMBER OF NEWBORNS WITH A POSITIVE SCREEN RESULT WHO RECEIVE REPEAT AND CONFIRMATORY TESTING WHEN CLINICALLY NECESSARY;
  - 4.2.5.3 THE NUMBER OF NEWBORNS WITH A POSITIVE SCREEN RESULT WHO RECEIVE REFERRAL SERVICES;
  - 4.2.5.4 THE NUMBER OF NEWBORNS WITH A POSITIVE SCREEN RESULT WHO MOVE OUT OF STATE, WITHDRAW FROM OR DO NOT PARTICIPATE IN FOLLOW-UP SERVICES, AND;
  - 4.2.5.5 SUCH OTHER MONITORING THE DEPARTMENT DEEMS APPROPRIATE TO MONITOR THE EFFECTIVENESS OF NEWBORN SCREENING, SECOND NEWBORN SCREENING AND FOLLOW-UP SERVICES.
- 4.3 IF A DESIGNEE IS UTILIZED BY THE DEPARTMENT, THE DESIGNEE MAY RECEIVE IDENTIFYING PATIENT INFORMATION, PROTECTED HEALTH INFORMATION, NAMED SUBMITTER INFORMATION AND ATTENDING HEALTH CARE PROVIDER INFORMATION TO THE EXTENT NECESSARY TO PERFORM THESE DUTIES AND IN THE MANNER AUTHORIZED BY LAW.

**COLORADO**

Board of Health

Department of Public Health &amp; Environment

# Notice of Public Rule-Making Hearing

December 19, 2018

ID #: 126

NOTICE is hereby given pursuant to the provisions of §24-4-103, C.R.S.; that the Colorado Board of Health will conduct a public rule-making hearing on:

**Date:** December 19, 2018**Time:** 10:00 AM**Place:** Sabin-Cleere Conference Room, Building A, 1st Floor, 4300 Cherry Creek Drive South, Denver, CO 80246

To consider the promulgation/amendments or repeal of:

**CCR Number(s)**

5 CCR 1005-4, Newborn Screening and Second Newborn Screening

The proposed rules have been developed by the following division or office of the Colorado Department of Public Health and Environment:

Laboratory Services

Statute(s) that requires or authorizes the Board of Health to promulgate, amend, or repeal this rule:

**Statute(s)**

§25-4-1004, C.R.S.

§25-4-1004.5, C.R.S.

**Agenda and Hearing Documents**

The Board of Health agenda and the proposed rules, together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis will be available, at least seven (7) days prior to the meeting, on the Board's website, <https://colorado.gov/cdphe/boh>.

For specific questions regarding the proposed rules, contact the division below:

Laboratory Services Division, 8100 Lowry Blvd., Denver, CO 80230, (303) 692-3681.

**Participation**

The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to three minutes or less depending on the number of persons wishing to comment.

**Written Testimony**

Pursuant to 6 CCR 1014-8, §3.02.1, written testimony must be submitted no later than five (5) calendar days prior to the rule-making hearing.

Persons wishing to submit written comments should submit them to: Colorado Board of Health, ATTN: Board of Health Unit, Program Assistant, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: [cdphe.bohrequests@state.co.us](mailto:cdphe.bohrequests@state.co.us)

**Written testimony is due by 5:00 p.m., Thursday, December 13, 2018.****Admin**

Deborah Nelson, Board of Health Administrator

Date: 2018-10-18T16:08:34



--

# Notice of Proposed Rulemaking

**Tracking number**

2018-00567

**Department**

1000 - Department of Public Health and Environment

**Agency**

1006 - Center for Health and Environmental Data (1006, 1009 Series)

**CCR number**

5 CCR 1006-1

**Rule title**

VITAL STATISTICS

## Rulemaking Hearing

**Date**

12/19/2018

**Time**

10:00 AM

**Location**

4300 Cherry Creek Drive South, Denver, CO 80246

**Subjects and issues involved**

The proposed revisions include technical clarifications to improve readability and update the rule to align with current practice. Additionally, the department proposes four substantial revisions to rule that include, consolidating the requirements and reporting time frames regarding the delayed birth registration, updating the search parameters for the voluntary adoption registry, adding language that allows sex designation to be identified as female, intersex or male, and to allow an individual to amend their sex on a birth certificate with proper documentation from the individual and licensed physician or licensed behavioral health provider.

**Statutory authority**

§25-2-103, C.R.S.

## Contact information

**Name**

Alex Quintana

**Title**

State Registrar Manager

**Telephone**

303-692-2164

**Email**

[alex.quintana@state.co.us](mailto:alex.quintana@state.co.us)



**COLORADO**  
Department of Public  
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

To: Members of the State Board of Health

From: A. Alex Quintana, State Registrar, CHED  
Chris Wells, Division Director, CHED

Through: Chris Wells, Division Director, CHED

Date: October 17, 2018

Subject: **Request for Rulemaking Hearing**  
Proposed Amendments to 5 CCR 1006-1, Vital Statistics, with a request for a rulemaking hearing to be set for December 19, 2018

---

The department is proposing changes to the Vital Statistics regulation, 5 CCR 1006-1, which stems from the Vital Statistics Act of 1984 (Title 25, Article 2).

The department has identified opportunities to modify, add, and remove language to the regulation as it is currently written to accomplish several purposes. The proposed rule updates technical language so that it is more reflective of current practice and terminology that has arisen due to changes in technology. Since this regulation was written, the department has implemented two electronic vital event registration systems - the birth registration system in 2008, and the death registration system in 2015. These changes have resulted in new terminology that is used by the Department and its partners in this work. The proposed rule removes language in the regulation that merely duplicates or is not consistent with state statute, and clarifies or reorganizes existing requirements so that it is easier to read and apply by those providing and receiving vital statistics services. Finally, the proposed rule expands the pathways delineated in rule to allow an individual that has transitioned from one sex to another to update their sex on a birth certificate without a court order. The parameters established in the rule ensure the department is able to maintain the integrity of the vital statistics record while minimizing the delays and costs transgender customers experience pursuing a court order.

The department appreciates the board's consideration.

STATEMENT OF BASIS AND PURPOSE  
AND SPECIFIC STATUTORY AUTHORITY  
for Amendments to  
5 CCR 1006-1, Vital Statistics

Basis and Purpose.

The Vital Statistics Act of 1984 (Title 25, Article 2), hereinafter “Act,” governs the administration of vital event registration and vital statistics reporting. The Act contains specific requirements for the Department and its designees. The Act also authorizes the Board of Health to promulgate any rules needed to implement the statute. Overall, the rule does not repeat the statutory requirements; rather, the rule elaborates upon the statute to provide direction and clarity for those performing these public health services. To the extent statute is repeated, this occurs to ensure the program maintains alignment between current and best practices, and the statutory directive.

The Department reviewed the rule pursuant to Section 24-4-103.3, C.R.S. Several technical edits to improve readability and update the rule to align with current practice are proposed. These changes:

- Remove obsolete terms and clarify existing language to align the rule and current practice,
- Consolidate and clarify the delayed registration requirements to make it easier for those reporting this information to know what is needed,
- Modify pronouns referring to the State Registrar in the context of the person, rather than the office,
- Remove references to specific forms, and
- Remove language that duplicates statute where there was no benefit to end-users of the rule to repeat statute.

The proposed rule also includes substantive changes. These include:

- The current rule concerning delayed birth registration is unclear. The language has created two tiers of delayed registration which is confusing to those reporting this information. The proposed language draws upon Department and local public health experience as well as the standard communicated in the Model State Vital Statistics Act and Model State Vital Statistics Regulation (2011 edition) developed by the National Association for Public Health Statistics and Information Systems, hereinafter referred to as the “NAPHSIS Model Regulation.” The proposed revision reorganizes and consolidates the requirements and reporting timeframes in a manner that maintains integrity in the vital record.
- In a case recently filed against the Department, the plaintiff argues that current law does not prohibit the Department from allowing an individual to change the sex designation on an original birth certificate and that an individual may seek this change without first obtaining a court order. The Department has studied state statute, the statutory authorization for rulemaking, the scope of the State Registrar’s discretion, current practice in other states, and the NAPHSIS Model Regulation. The Department, after consulting with the Office of the Attorney General, found that the Board of Health has the authority to modify the rules and requirements of the State Registrar.

The requirements communicated in the rule can be modified to address the concerns raised in the litigation regarding the Department's current process.

After determining that rulemaking was a viable pathway, the Department assessed what would be needed to enable transgender individuals to make this change while maintaining the integrity of the vital statistics record. After careful study, the Department is proposing to allow an individual to amend their sex on a birth certificate with a court order or by the individual and a licensed physician or licensed behavioral healthcare provider documenting that the sex designation on their birth certificate does not align with their identity. An individual may only pursue an administrative change to the sex designation on their birth certificate one time; further revision requires a court order. Importantly, the rule does not require that the individual document that they have completed surgery or receive any specific medical treatments. Similarly, the rule does not require that the individual hold themselves out and publicly communicate their gender identity. Documenting, through an individual providing care, that the individual has received appropriate clinical treatment for their correct sex which differs from the identity proclaimed at birth is sufficient.

- Adding language that allows the sex designation to be identified as female, intersex or male. Any of these three identify biological characteristics and are thus responses that conform to the intent of what is to be captured by the 'sex' field on the birth certificate at the time of birth. By adding this third category, all possible biological sex at birth categories would be represented and can be appropriately be entered by a physician or medical personnel attending a birth.
- Colorado has two statutory pathways for adult adoptees and birth parents to learn more about their child or birth family. Pursuant to Section 25-2-113.5, C.R.S. the State Registrar maintains a voluntary adoption registry. Through the voluntary registry, the State Registrar maintains lists of adult adoptees, can match information to qualified adult adoptees, qualified birth parents, relatives of qualified adult adoptees and qualified adoptive birth parents, and former foster children who have consented to release of identifying information. The State Registrar reviews the lists to identify matches and performs matching services as required by statute. The statute allows a birth parent to be matched with an adult adoptee without the birth parent's consent in limited circumstances. In addition, under the Colorado Children's Code, Section 19- 5-301 *et seq.*, C.R.S., adult adoptees, adoptive parents, biological parents, biological siblings, and descendants and similarly situated individuals may access the original, unredacted birth certificate, court records, and related information through a confidential intermediary who operates pursuant to rules promulgated through the Colorado Adoption Intermediary Commission. Pursuant to Section 19-5-305(1.5)(c), the State Registrar may, in specific circumstances, provide contact and medical information to an adult adoptee, an adoptive parent of a minor adoptee, a custodial grandparent of a minor adoptee, or the legal representative of any such individual, as well as descendants and adoptive family members. Because these individuals have established that they may obtain the vital event record, the Department provides this information at the same time as this meets the customer's service needs without additional back and forth. Under Section 19-5-305, C.R.S. until January 1, 2016, birth parents had the opportunity to communicate whether they authorized release of their information. On and after January 1, 2016, birth parents no longer had the ability to authorize or object to release of their contact information to an adult adoptee. The expansion of access occurring under the Children's Code has made the voluntary adoption registry less used; however, the rule remains necessary as a search performed under the voluntary adoption registry is to be governed by

## Board of Health rules.

SBP 2

The proposed rule updates the search parameters to align with the scope of the Department's authority, align with current data and privacy practices, and ensure that the Department can apply the rule within existing resources.

The Department reviewed Section 10.2 carefully to ensure it communicates current confidentiality, disclosure and data release standards. The proposed changes to this section are not substantive. When reviewing the use of vital statistics data for research, the Department conducted extensive study of both the legally permitted and best practices concerning the use and dissemination of vital statistics data for research purposes. This included a study of the statute, other state and federal practices and federal protections for those participating in human subjects research. Though the rule is unchanged, the Department has developed a procedure outlining how it reviews and processes requests for access to confidential vital statistics data, including conditions for release, detailed terms of use, and requirements for maintenance of the security of the data and confidentiality of any records provided.

The Department reviewed Section 14 and has determined that collection of data concerning fetal deaths (both those <20 weeks gestation and those 20+ weeks gestation), as well as induced termination of pregnancy (ITOPs)/abortions remains a critical vital records and public health surveillance activity. These data are necessary to monitor key public health trends, including occurrences of pregnancy and pregnancy outcomes. Monitoring fetal loss and abortions is necessary for the ongoing evaluation of the effect of improved access to contraception, and is also needed to assess and address persistent disparities in adverse birth outcomes, including fetal loss, medically-indicated abortions, and perinatal mortality as well as overall population-wide fertility patterns. Additionally, these data are utilized by key partners, including the CDC, in reporting similar trends at the regional and national level. Without these data, Colorado would be an outlier of non-participation in a comprehensive national vital statistics system, and the cessation of this data collection and statistical reporting would reduce the effectiveness of our Department to respond to issues affecting the health of Coloradans.

Section 5.1(E) in the proposed rule communicates that a certificate will be marked as "amended" or "delayed" when required by law. Though reorganized, the substantive requirement is unchanged and is based upon the statutory directives for the program. Section 25-2-115(1), C.R.S. requires the State Registrar to identify a certificate as amended unless the change is an addition or minor edit made within one year after the date of the statistical event, when there is an addition of a birth parent, or when the child's surname is changed due to the establishment of parentage pursuant to Section 25-2-112(3), C.R.S. A certificate is marked "delayed" when a birth or death is not registered within one year after the vital event, Sections 25-2-114 and 25-2-112.3, C.R.S.

Language in the regulation referencing "mother" and "father" have been reduced but some of these references remain to ensure the rules remain in alignment with state statutes and acknowledge the responsibilities and rights of the birthing parent(s). These terms are still used in the model regulations. Where gender-neutral terms could be used clearly, this has occurred. The Department appreciates that gender-neutral language is being discussed in many forums. The Department will continue to monitor. Similarly, the term "civil union" was not added to line 326 because the marriage certificate is the only supporting document mentioned as acceptable in the statute, Section 25-2-113, C.R.S. Couples in a civil union can request to add the second parent to the form; such requests are not processed as new certificates.

SBP 3

Specific Statutory Authority.

Statutes that require or authorize rulemaking: C.R.S. 25-2-103.

Is this rulemaking due to a change in state statute?

\_\_\_\_\_ Yes, the bill number is \_\_\_\_\_. Rules are \_\_\_\_\_ authorized \_\_\_\_\_ required.

\_\_\_X\_\_\_ No

Does this rulemaking incorporate materials by reference?

\_\_\_\_\_ Yes \_\_\_\_\_ URL or \_\_\_\_\_ Sent to State Publications Library

\_\_\_X\_\_\_ No

Does this rulemaking create or modify fines or fees?

\_\_\_\_\_ Yes

\_\_\_X\_\_\_ No

Does the proposed rule create (or increase) a state mandate on local government?

\_\_\_X\_\_\_ No. This rule does not require a local government to perform or increase a specific activity for which the local government will not be reimbursed. Though the rule does not contain a state mandate, the rule may apply to a local government if the local government has opted to perform an activity, or local government may be engaged as a stakeholder because the rule is important to other local government activities.

\_\_\_\_\_ No. This rulemaking reduces or eliminates a state mandate on local government.

\_\_\_\_\_ Yes. This rule includes a new state mandate or increases the level of service required to comply with an existing state mandate, and local government will not be reimbursed for the costs associated with the new mandate or increase in service.

The state mandate is categorized as:

\_\_\_\_\_ Necessitated by federal law, state law, or a court order

\_\_\_\_\_ Caused by the State's participation in an optional federal program

\_\_\_\_\_ Imposed by the sole discretion of a Department

\_\_\_\_\_ Other: \_\_\_\_\_

Has an elected official or other representatives of local governments disagreed with this categorization of the mandate? \_\_\_Yes\_\_\_ No

If yes, please explain why there is disagreement in the categorization.

Please elaborate as to why a rule that contains a state mandate on local government is necessary.

SBP 4

REGULATORY ANALYSIS  
for Amendments to  
5 CCR 1006-1, Vital Statistics

1. A description of the classes of persons affected by the proposed rule, including the classes that will bear the costs and the classes that will benefit from the proposed rule.
  - A. Identify each group of individuals/entities that rely on the rule to maintain their own businesses, agencies or operation, and the size of the group:
    - Funeral Homes - 262
    - Coroners - 64
    - \*Local Vital Records Offices - 60
    - Birthing Hospitals - 61
    - \*Clerk and Recorder Offices - 64
  - B. Identify each group of individuals/entities interested in the outcomes the rule and those identified in #1.A achieve, and if applicable, the size of the group:
    - U.S. Department of State
    - Colorado Department of Motor Vehicles
    - Colorado Department of Public Health and Environment programs engaged in disease control, disease prevention and public health emerging issues for the LGBT community including but not limited to linkages to care, increased risk for homelessness, STI/HIV, and suicide.
    - LGBTQ individuals and advocacy organizations
  - C. Identify each group of individuals/Entities that benefit from, may be harmed by or at-risk because of the rule, and if applicable, the size of the group:
    - Colorado vital statistics customers, particularly Colorado delayed birth registration customers, Colorado born customers seeking to change their sex designation on their birth certificate, and the biological second parent in voluntary adoption registry match requests
    - Physicians - Although there are no proposed changes to the regulation that impact physicians directly, they are listed here because the rule affects their work.
2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.
  - A. For those that rely on the rule to maintain their own businesses, agencies or operations:

Describe the anticipated favorable and non-favorable non-economic outcomes (short-term and long-term), and if known, the likelihood of the outcomes:

Favorable non-economic outcomes:



The proposed rule clarifies, reorganizes and improves overall readability. This will improve application, reduce misinterpretation and improve customer experience.

Unfavorable non-economic outcomes:

Individuals and entities identified in #1.A need to review and be aware of the changes; however, the time taken to understand the current rule is minimal and is offset by the benefits that come from improved readability.

Anticipated financial impact:

Anticipated Costs:	Anticipated Benefits:
Description of costs that must be incurred. None.	Description of financial benefit. None.
Description of costs that may be incurred. None.	
Cost or cost range. None.	Savings or range of savings. None.
Dollar amounts that have not been captured and why: N/A	Dollar amounts that have not been captured and why: N/A

B. For those that are affected by or interested in the outcomes the rule and those identified in #1.A achieve.

Describe the favorable or unfavorable outcomes (short-term and long-term), and if known, the likelihood of the outcomes:

Favorable non-economic outcomes:

Though the Department does not control the decisions of other federal and state agencies decisions to issue passports or identification documents, it is anticipated that the U.S. Department of State and the Colorado Department of Revenue, Division of Motor Vehicles, who routinely rely on birth certificates from their customers in order to grant a U.S. Passport or issue a state identification card including a driver's license, will benefit from the clearer communication of the Department's standards. In addition, by improving services for vital records customers, our customers may have better documentation when working with these other agencies.

Some of the changes may reduce stigma and disenfranchisement. To the extent the rules could be modified to reduce reliance on statutory terms that may be out of date, such as "legitimacy" or "paternity", the Department has done so. Similarly, the proposed rule language acknowledges an administrative pathway for updating the sex indicator on a birth certificate.

Unfavorable non-economic outcomes:

None anticipated.

Any anticipated financial costs monitored by these individuals/entities? No

Any anticipated financial benefits monitored by these individuals/entities? No.

- C. For those that benefit from, are harmed by or are at risk because of the rule, the services provided by individuals identified in #1.A, and if applicable, the stakeholders or partners identified in #1.B.

Describe the favorable or unfavorable outcomes (short-term and long-term), and if known, the likelihood of the outcomes:

Clarifying the rule, ensuring customers can produce the documentation required, reorganizing the delayed birth registration section, modifying the voluntary adoption registry match request process to align with statute and adding the new section for individuals seeking to change the sex indicator on their birth certificate, makes it easier for these customers to understand what is needed to obtain the service(s) requested and increases efficient processing of reports and requests.

Financial costs to these individuals/entities: No.

Financial benefits to or cost avoidance for these individuals/entities: Yes.

Individuals may be able to avoid court costs if they can take advantage of administrative pathways to amend a vital event record.

3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

- A. Anticipated CDPHE personal services, operating costs or other expenditures:

The changes proposed in the regulation are clarifying. The changes may improve the Department's ability to address customer needs efficiently and minimize questions from customers and local government personnel who apply the rule. It is unknown if improving the process will increase the number of delayed birth certifications or sex designation changes. It is anticipated that any workload increase associated with these changes would be minimal and are offset by the saving associated with reducing staff voluntary adoption registry activities. Any effect on the count of requests from delayed registration customers or customers seeking to change their sex indicator on their birth certificate are expected to be absorbed by the program. In sum, it is a net neutral effect.

Anticipated CDPHE Revenues:

There is no expectation that revenues will increase as a result of the proposed language changes. There are no changes to the fees as listed in current regulation.

- B. Anticipated personal services, operating costs or other expenditures by another state agency:

n/a

Anticipated Revenues for another state agency:

n/a

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Check mark all that apply:

- ☐ Inaction is not an option because the statute requires rules be promulgated.
- ☐ The proposed revisions are necessary to comply with federal or state statutory mandates, federal or state regulations, and department funding obligations.
- ☐ The proposed revisions appropriately maintain alignment with other states or national standards.
- ☒ The proposed revisions implement a Regulatory Efficiency Review (rule review) result, or improve public and environmental health practice.
- ☒ The proposed revisions implement stakeholder feedback.
- ☐ The proposed revisions advance the following CDPHE Strategic Plan priorities:

Goal 1, Implement public health and environmental priorities  
 Goal 2, Increase Efficiency, Effectiveness and Elegance  
 Goal 3, Improve Employee Engagement  
 Goal 4, Promote health equity and environmental justice  
 Goal 5, Prepare and respond to emerging issues, and  
 Comply with statutory mandates and funding obligations

Strategies to support these goals:

- ☐ Substance Abuse (Goal 1)
- ☐ Mental Health (Goal 1, 2, 3 and 4)
- ☐ Obesity (Goal 1)
- ☐ Immunization (Goal 1)
- ☐ Air Quality (Goal 1)
- ☐ Water Quality (Goal 1)
- ☒ Data collection and dissemination (Goal 1, 2, 3, 4 and 5)
- ☐ Implements quality improvement or a quality improvement project (Goal 1, 2, 3 and 5)
- ☐ Employee Engagement (career growth, recognition, worksite wellness) (Goal 1, 2 and 3)
- ☒ Incorporate health equity and environmental justice into decision-making (Goal 1, 3 and 4)
- ☐ Establish infrastructure to detect, prepare and respond to emerging issues (Goal 1, 2, 3, 4, and 5)

Other favorable and unfavorable consequences of inaction: n/a.

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

Rulemaking is proposed when it is the least costly method or the only statutorily allowable method for achieving the purpose of the statute. The specific revisions proposed in this rulemaking were developed in conjunction with stakeholders. The benefits, risks and costs of these proposed revisions were compared to the costs and benefits of other options. The proposed revisions provide the most benefit for the least amount of cost, are the minimum necessary or are the most feasible manner to achieve compliance with statute.

6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.

Clarifying the rule to improve customer service can only occur by proposing changes. The proposed changes harmonize Colorado law with the NAPHSIS Model Regulation and other materials governing best practices for vital statistics offices. This rulemaking implements the regulatory efficiency review directed in statute and through executive order. The changes proposed sought to support local government agencies that perform these activities by applying the rule. The rule does not include a new mandate.

7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.

The data used in the analysis comes from the program's collective experience and knowledge of operating within the State vital statistics system, the NAPHSIS Model Regulation, and discussions with other state partners during NAPHSIS conferences and calls. The changes proposed in the regulation are expected to remain relevant for the short and long term.

**STAKEHOLDER ENGAGEMENT**  
for Amendments to  
5 CCR 1006-1, Vital Statistics

State law requires agencies to establish a representative group of participants when considering to adopt or modify new and existing rules. This is commonly referred to as a stakeholder group.

**Early Stakeholder Engagement:**

The following individuals and/or entities were invited to provide input and included in the development of these proposed rules:

<b>Organization</b>	<b>Representative</b>
Colorado Coroner's Association	Randy Gorton, CCA President
Funeral Homes	(Broadcast via email list)
Local Vital Records Offices	Email distribution
Birthing Hospitals and Birth Centers	Email distribution
One Colorado	Daniel Ramos
U.S Dept of State	Lanissa Larson, Fraud Program Manager
Colorado DMV	
Colorado Clerk and Recorders	Email distribution
American Academy of Pediatrics, Colorado Chapter	
Colorado Medical Society	
The GLBT Community Center of Colorado	
The Gender Identity Center of Colorado	
PFLAG Denver	
Trans Youth Education & Support	
State Senator Dominick Moreno	
State Representative Daneya Esgar	
Emma Shinn	
John McHugh	
CDHS and Colorado Adoption Intermediary Commission	

**Stakeholder Group Notification**

The stakeholder group was provided notice of the rulemaking hearing and provided a copy of the proposed rules or the internet location where the rules may be viewed. Notice was provided prior to the date the notice of rulemaking was published in the Colorado Register (typically, the 10<sup>th</sup> of the month following the Request for Rulemaking).

☒ X Not applicable. This is a Request for Rulemaking Packet. Notification will occur if the Board of Health sets this matter for rulemaking.

☐ Yes.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

The department solicited feedback from the stakeholders listed above through a survey that was sent via email distribution. The survey asked respondents to rate how strongly they supported or opposed the changes proposed by the department in the rule on a scale of 1 to 5, with '1' meaning 'Strongly Oppose', '5' meaning 'Strongly Support', and provided a section where they could provide written feedback. There are five areas in the survey for respondents to provide a rating, and those are: 1) Technical Language Clean-Up, 2) Changes to the Delayed Birth Registration Process, 3) Changes to Sex Designation Process on the Birth Records 4) Addition of the 'Intersex' category for birth records, and 5) Changes to the voluntary adoption registry second parent search process.

As of 9/28/18, there are 14 responses, with some areas having fewer responses than others. A summary is provided below. The Department will continue to review feedback received. If this matter is set for hearing, the rulemaking packet will be updated for the hearing.

### 1) Technical Language Clean-Up

A large majority were supportive of technical language cleanup proposed changes to the rule with no one opposed to them.

### 2) Changes to the Delayed Birth Registration Process

Concerning changes related to the Delayed Birth Registration process, 10 out of the 12 responses received were either neutral or supportive on the changes, and 2 out of the 12 were not in favor. One of the two comments received suggested that the Department should have physicians sign death certificates electronically as the only option for cause of death certification on death certificates. The proposed changes to the rule require that all death certificates are registered electronically, with exceptions given on a case by case basis.

### 3) Changes to Sex Designation Process on the Birth Records and 4) Addition of the 'Intersex' category for birth records

The proposed changes concerning the process for amending the sex designation on the birth certificate and the proposal to add an 'intersex' category to the birth record received mixed results. In both areas, 6 out of 14 responses were 'strongly oppose' to the changes while 5 out of the 14 were 'strongly support, with the 3 remaining responses roughly spread across the inner ratings. In the second of the two comments received, the commenter stated that, 'there are only two sexes, male and female.'

Concerning the addition of 'intersex' as a third option in addition to 'male' and 'female', the department believes that this third option appropriately covers the remaining segment of the population whose biological sex does not conform to the typical definitions of 'male' and 'female'. The birth certificate captures the biological sex of the individual that is born in this state at the time of birth, and the sex of almost all births are either 'female' or 'male'. However, given that there are individuals who do not have specific 'male' or 'female' characteristics, the 'intersex' designation seeks to represent this segment of the population. Adding this third option as an amendment to a record helps those individuals who have intersex characteristics and want to receive a more accurate representation of their sex status as reflected on their birth certificate.

The Department appreciates that the birth certificate is relied upon by other agencies for passports and identification. The Department has no authority to compel these other agencies to honor an intersex designation or amendment to change the sex designation.

5) Changes to the voluntary adoption registry second parent search process.

Lastly, the proposed changes to the rule concerning the voluntary adoption registry second parent search process were not opposed, with the majority in support or neutral on the changes. Therefore, the department will keep the proposed language concerning this area at this point in time.

Please identify the determinants of health or other health equity and environmental justice considerations, values or outcomes related to this rulemaking.

By conducting the regulatory efficiency review, opportunities to clear up language in efforts to enhance readability of the statute were addressed. Regulations that were confusing, outdated, inefficient or outdated were replaced with current terminology and phrasing that enhances readability for the sake of all affected stakeholders, beneficiaries, and customers.

Overall, after considering the benefits, risks and costs, the proposed rule:

Select all that apply.

	Improves behavioral health and mental health; or, reduces substance abuse or suicide risk.		Reduces or eliminates health care costs, improves access to health care or the system of care; stabilizes individual participation; or, improves the quality of care for unserved or underserved populations.
	Improves housing, land use, neighborhoods, local infrastructure, community services, built environment, safe physical spaces or transportation.	x	Reduces occupational hazards; improves an individual's ability to secure or maintain employment; or, increases stability in an employer's workforce.
	Improves access to food and healthy food options.		Reduces exposure to toxins, pollutants, contaminants or hazardous substances; or ensures the safe application of radioactive material or chemicals.
x	Improves access to public and environmental health information; improves the readability of the rule; or, increases the shared understanding of roles and responsibilities, or what occurs under a rule.		Supports community partnerships; community planning efforts; community needs for data to inform decisions; community needs to evaluate the effectiveness of its efforts and outcomes.
	Increases a child's ability to participate in early education and educational opportunities through prevention efforts that increase protective factors and decrease risk factors, or stabilizes individual participation in the opportunity.		Considers the value of different lived experiences and the increased opportunity to be effective when services are culturally responsive.
	Monitors, diagnoses and investigates health problems, and health or environmental hazards in the community.		Ensures a competent public and environmental health workforce or health care workforce.
	Other: _____ _____		Other: _____ _____



**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**Center for Health and Environmental Data**

**VITAL STATISTICS**

**5 CCR 1006-1**

**Adopted by the Board of Health on \_\_\_\_\_ . Effective \_\_\_\_\_ .**

**SECTION 1 AUTHORITY AND PURPOSE FOR ESTABLISHING RULES AND REGULATIONS**

These regulations are ~~being~~ promulgated pursuant to ~~CRS~~Section 25-2-103, C.R.S. which states that the “state board of health shall adopt, promulgate, amend, and repeal such rules and regulations and orders in accordance with the provisions of Section 24-4-103, C.R.S. as are necessary and proper for carrying out the provisions of the article.”

The purpose of these regulations is to establish rules governing the administration of Colorado’s vital statistics system.

**SECTION 2 ~~VITAL RECORDS STRUCTURE DEFINITIONS. DESIGNATION OF OFFICES. SUBMISSION. USE. AND DISTRIBUTIONS OF VITAL STATISTICS~~**

**SECTION 2.1 ~~DUTIES OF STATE REGISTRAR (25-2-103 through 25-2-105; 25-2-122)~~ DEFINITIONS**

As used in this regulation, unless the context otherwise requires:

A. “Certificate” means a printed, certified copy of the vital event record.

B. “Legal representative” means an attorney, physician, funeral director, or other authorized agent acting on behalf of the registrant or his family.

A-C. “Next of kin” means a family member or members of the deceased who, under Colorado law, have legal authority over the disposition of human remains, see Section 12-54-102(17), C.R.S.

D. “Person with a direct and tangible interest” means the registrant, a member of the registrant’s immediate family, the registrant’s legal guardian or legal custodian, or their respective legal representatives which includes an attorney, physician, funeral director, or other authorized agent acting on behalf of the registrant or his family. Others may demonstrate a direct and tangible interest when information is needed for determination or protection of a personal or property right. The natural parents of adopted children when neither has custody, and commercial firms or agencies requesting listings of names and addresses shall not be considered to have a direct and tangible interest.

E. “Record” means an electronic or paper vital event registered as reported, updated, and stored within the files of the office of the state registrar of vital statistics and designated offices.

F. “Report” means an electronic or paper document containing information related to a vital event submitted by a person or entity required to submit the information in accordance with this state statute and this regulation for the purpose of registering a vital event.

G. “State Registrar” means the State Registrar of Vital Statistics or their designee.

H. "Vital event" means an event recognized under Colorado law as statistically significant. These include but are not limited to birth, marriage, civil unions, adoption, dissolution or nullification of marriage, dissolution or nullification of civil unions, parentage determinations, change of name, change of sex, death, and any data related thereto which have been accepted for registration and incorporated into the official records and certificates.

## SECTION 2.2 Designation Of Additional Offices

A. The State Registrar shall determine whether offices other than the office of the State Registrar and organized local health departments established pursuant to Part 5 or 7 of Article 1 of Title 25 are needed to aid in the efficient administration of the system of vital statistics. Such determination shall be based on an evaluation of the most efficient method to meet the needs of the people of this state with respect to the establishment and operation of the system of vital statistics.

B. The State Registrar shall delegate such duties and responsibilities to such offices as the State Registrar deems necessary to insure the efficient operation of the system of vital statistics. If the State Registrar determines that additional offices are necessary, such offices shall be designated or established by the State Registrar. The duties and responsibilities may be assigned to currently existing offices, or special branch offices of the State Registrar may be established in those areas where they are deemed necessary, or a combination of existing offices and branch offices may be used. The State Registrar shall determine the responsibilities and duties of each office independently.

~~B.—Employees and individuals operating in the state or local offices will comply with the vital statistics law; this rule; and the policies, processes, and procedures directed by the State Registrar, including requirements to attend periodic meetings as required by the State Registrar. As needed, state and local offices may be asked to assess and document performance and costs associated with administration of vital statistics.~~

~~C.—In all cases where existing offices are utilized, the employees of such offices shall adhere to the vital statistics law and regulations and shall meet performance and accounting standards detailed in Section 2.4.~~

~~D.C. \_\_\_\_\_ The State Registrar shall delegate such duties and responsibilities to such offices as he deems necessary to insure the efficient operation of the system of vital statistics.~~

## SECTION 2.3 Submission, Use And Distribution Of Vital Statistics Information

All electronic or paper forms, reports, records, certificates, and data used in the system of vital statistics are the property of the office of the state registrar of vital statistics, and shall be surrendered to the State Registrar as required by law, submitted and distributed in the form and manner required prescribed and distributed by the State Registrar, and only used for official purposes, including the reporting vital statistics, or as authorized by statute and this rule. Only software approved by the State Registrar shall be used in the electronic reporting of vital events.

## SECTION 2.4 General Requirements For Preparing ~~ation~~ Of Certificates

~~All forms, certificates, and reports used in the system of vital statistics are the property of the Office of the State Registrar of Vital Statistics and shall be surrendered to the State Registrar of Vital Statistics—hereinafter referred to as "State Registrar"—upon demand. The forms prescribed and distributed by the State Registrar for reporting vital statistics shall be used only for official purposes.~~

~~Only those forms furnished or approved by the State Registrar shall be used in the reporting of vital statistics or in making copies thereof. Only software approved by the state registrar shall be used in the electronic reporting of vital events.~~

A. Those registering vital events will use the current version of the electronic registration system approved by the State Registrar. The State Registrar, at their discretion, may grant waivers for not using the electronic registration system in unusual circumstances. If a waiver is granted, the report will be submitted on All certificates and records relating to vital statistics must be prepared on a typewriter with a black ribbon, on a letter-quality printer with black or blue ink, or printed legibly in black, unfading ink, or using the current version of an electronic registration system approved by the state registrar. Use of an approved electronic registration system is the preferred method to be used in most circumstances. The state registrar may grant waivers for not using the electronic registration system in unusual circumstances.

B. Only those individuals authorized in state statute to register and certify vital event information to the State Registrar can submit a report. All signatures required shall be entered in black, unfading ink or an electronically as authorized by Section 24-71-101, C.R.S. signature when authorized by the state registrar. et seq.

C. Unless otherwise directed by the State Registrar, no certificate-report shall be complete and correct and acceptable for registration if it:

1. (a) — That dDoes not have the certifier's name typed or printed legibly under his signature;
2. (b) — That Ddoes not supply all items of information called for thereon or satisfactorily account for their omission;
3. (c) — That Ccontains alterations or erasures;
4. (d) — DThat does not contain handwritten or electronic signatures as required;
5. (e) — That iis marked "copy" or "duplicate" ;
6. (f) — IThat is a carbon copy;
7. (g) — That is prepared on an improper form;
8. 7. (h) — CThat contains improper or inconsistent data;
9. 8. (i) — CThat contains an indefinite cause of death which denotes only symptoms of disease or conditions resulting from disease;
10. 9. (j) — That is not in English or contains non-English symbols;
11. 10.9. (k) — IThat is not prepared in the form and manner prescribed by state statute, these rules and the in conformity with regulations or instructions issued by the State Registrar.

D. (a) Full or short form certified copies of vital records may be made by mechanical, electronic, or other reproductive processes, except that the information contained in the "Information for Medical and Health Use Only" section of the birth certificate shall not be included. (b) — When a certified copy is issued, each certification shall be certified as a true copy by the State Registrar, and shall include the date issued, the name of the issuing officer, the registrar's signature or an authorized facsimile thereof, and the seal of the issuing office.

E. When the State Registrar finds evidence that a certificate was registered through misrepresentation or fraud, the State Registrar shall have the authority to withhold the issuance of a certified copy of such certificate until additional evidence satisfactory to the State Registrar has been obtained or until a court determination of the facts has been made.

~~F. Applicants for heirloom birth certificates and heirloom marriage certificates shall pay a fee of \$35.00 per copy.~~

### SECTION 3 HEIRLOOM BIRTH CERTIFICATES

~~Applicants for heirloom birth certificates and heirloom marriage certificates shall pay a fee of \$35.00 per copy.~~  
~~LIVING INFANTS OF UNKNOWN PARENTAGE~~

Applicants for heirloom birth certificates and heirloom marriage certificates shall pay a fee of \$35.00 per copy.

~~In addition to the requirements in Sections 2.1 and 2.2, whomever assumes custody of a infant of unknown parentage shall indicate the location the child was found as the place of birth and provide any additional known information as required by the State Registrar.~~

### SECTION 4 ~~DELAYED~~ REGISTRATION OF BIRTH

#### SECTION 4.1 Sex Designation

~~The record and certificate may identify the sex designation as female, intersex or male.~~

#### SECTION 4.2 Delayed Registration Of Birth

~~Any birth registered after 1 year or more afteref the date of birth, constitutes a delayed registration of birth.~~

A. 1. ~~Any individual eighteen years of age or older or an emancipated minor, born in the state of Colorado whose birth is not registered in this state may request the registration of a delayed report of birth.~~

2. ~~If an individual is under 18 years of age, the request for registration of a delayed report of birth may be submitted by one of the following in the indicated order of priority:~~

a. ~~One of the parents of the registrant,~~

b. ~~The legal guardian of the registrant,~~

c. ~~The legal custodian of the registrant, or~~

d. ~~In the absence, inability or refusal of a parent, guardian or legal custodian, any next of kin who is eighteen years of age or older, at least ten years older than the registrant, and has personal knowledge of the facts of live birth.~~

B. 1. ~~An individual requesting registration of a delayed report of birth must provide a sworn, signed and notarized statement that establishes in the form and manner required by the State Registrar:~~

a. ~~The full name of the person at the time of live birth;~~

b. ~~The date of birth and place of live birth;~~

c. ~~The full name of the mother prior to first marriage;~~

d. ~~The full name of the father unless parentage needs to be amended pursuant to Section 5.~~

2. ~~To establish these facts, the requestor must submit the following documentation:~~

a. One document showing name;

b. Two documents proving birthdate or age (at least one showing actual birthdate);

c. Two documents proving birthplace; and,

d. One document proving parentage.

At least one of the documents identified above must be have been created during the first 10 years of life. One document may be a sworn affidavit that is notarized.

3. The State Registrar may require additional evidence in support of the facts of birth and/or an explanation of why the report of birth was not registered within the required ten days.

C. The State Registrar, or their designee, shall determine the acceptability of all documentary evidence submitted. All documents must be internally consistent. Documents must be from independent sources and shall be in the form of the original record or a duly certified copy thereof or a signed statement from the custodian of the record or document. Documents may include, but are not limited to:

1. Census records;

2. Hospital records;

3. Military records;

4. Social security records;

5. Voter registration records;

6. School records; or

7. Other documents as designated by the State Registrar.

D. The submission and documentation shall be reviewed and upon approval, an abstract will be developed. The abstract will identify each document submitted to support the facts shown on the delayed birth certificate including, the title or description of the document, the date of the original filing of the document being abstracted, and the information regarding the birth facts contained in the document. The abstract will be attached to the delayed certificate of birth. Original documents submitted in support of the delayed birth registration shall be returned to the applicant after review and abstraction.

E. 1. The State Registrar, or their designee, shall, by signature, certify that no prior birth certificate is on file for the person whose birth is to be recorded, that the evidence submitted has been reviewed and abstracted, and that the documentation establishes the facts of birth;

2. Births registered after ten days, but within one year from the date of birth, shall not be marked "delayed."

F. Requests for delayed certificates which have not been completed within one year from the date of application may be dismissed at the discretion of the State Registrar. Upon dismissal, the State Registrar shall so advise the applicant and all original documents submitted in support of such registration shall be returned to the applicant

~~Certificates of birth filed after ten days, but within one year from the date of birth, shall be registered on the standard form of live birth certificate in the manner prescribed in 25-2-114. Such certificate shall not be marked "Delayed".~~

~~In any case where the certificate is signed by someone other than the attendant or person in charge of the institution where birth occurred, a notarized statement setting forth the reason therefor must be submitted.~~

~~The State Registrar may require additional evidence in support of the facts of birth and/or an explanation of why the certificate of birth was not filed within the required ten days.~~

#### ~~Section 4.2 — Registration After First Birthday and Before Seventh Birthday~~

~~Certificates of birth filed after the child's first birthday but before his seventh birthday shall be registered on the standard form of live birth certificate in the manner prescribed in 25-2-114. Such certificate shall be marked "Delayed" on its face.~~

#### ~~Section 4.3 — Delayed Certificate of Birth Form~~

~~All certificates registered seven years or more after the date of birth are to be registered on a delayed certificate of birth form prescribed by the State Registrar.~~

#### ~~Section 4.4 — Who May Request the Registration of and Sign a Delayed Certificate of Birth~~

~~Any person born in the State whose birth is not recorded in this State, or his parent, guardian, or older person in his immediate family acting for the registrant and having personal knowledge of the facts of birth may request the registration of a delayed certificate of birth, subject to these regulations and instructions issued by the State Registrar.~~

~~Each delayed certificate of birth shall be signed and sworn to before an official authorized to administer oaths by the person whose birth is to be registered if such person is 18 years of age or over and is competent to sign and swear to the accuracy of the facts stated therein; otherwise the certificate shall be signed and sworn to by one of the following in the indicated order of priority:~~

~~(a) — One of the parents of the registrant, or~~

~~(b) — The guardian of the registrant, or~~

~~(c) — Any older person in his immediate family having personal knowledge of the facts of birth.~~

#### ~~Section 4.5 — Facts to be Established for a Delayed Registration of Birth~~

~~The minimum facts which must be established by documentary evidence shall be the following:~~

~~(a) — The full name of the person at the time of birth;~~

~~(b) — The date of birth and place of birth;~~

~~(c) — The full maiden name of the mother;~~

~~(d) — The full name of the father; except that if the mother was not married either at the time of conception or birth the name of the father shall not be entered on the delayed certificate except as provided in Section 5.~~

#### ~~Section 4.6 — Documentary Evidence Requirements~~

~~To be acceptable for filing, the name of the registrant, the date and place of birth and the parents entered on a delayed certificate of birth shall be supported by the following:~~

~~(a) — If the record is filed within seven years after the date of birth, one document showing name, birthdate, birthplace and parentage. If the birth occurred in a hospital or other institution, the administrator of the institution shall certify to the facts of birth. If the birth did not occur in an institution but was attended by a physician, the physician shall certify to the facts of birth. If the birth did not occur in an institution and was not attended by a physician any person witnessing the birth shall certify to the facts of birth, or in the absence of any such witness the father or mother shall certify to the facts of birth. Additional documentation of birthplace may be required.~~

~~(b) — If the record is filed seven years or more after the date of birth, two documents proving birthdate or age (at least one showing actual birthdate), two documents proving birthplace and one document proving parentage. At least one of the documents must be a record made during the first seven years of life. Additional documentation may be required.~~

#### ~~Section 4.7 — Documentary Evidence — Acceptability~~

~~The State Registrar may establish a priority of best evidence.~~

~~Documents presented, such as census, hospital, church, and school records, must be from independent sources and shall be in the form of the original record or a duly certified copy thereof or a signed statement from the custodian of the record or document. The documents must be internally consistent.~~

#### ~~Section 4.8 — Abstraction of Documentary Evidence~~

~~The State Registrar, or his designated representative, shall abstract on the delayed certificate of birth a description of each document submitted to support the facts shown on the delayed birth certificate. This description shall include:~~

~~(a) — The title or description of the document;~~

~~(b) — The date of the original filing of the document being abstracted;~~

~~(c) — The information regarding the birth facts contained in the document.~~

~~All documents submitted in support of the delayed birth registration shall be returned to the applicant after review.~~

#### ~~Section 4.9 — Certification by the State Registrar~~

~~The State Registrar, or his designated representative, shall, by signature, certify:~~

~~(a) — That no prior birth certificate is on file for the person whose birth is to be recorded;~~

~~(b) — That he has reviewed the evidence submitted to establish the facts of birth;~~

~~(c) — That the abstract of the evidence appearing on the delayed certificate of birth accurately reflects the nature and content of the document.~~

#### ~~Section 4.10 — Dismissal After One Year~~

~~Applications for delayed certificates which have not been completed within one year from the date of application may be dismissed at the discretion of the State Registrar. Upon dismissal, the State Registrar~~



~~shall so advise the applicant and all documents submitted in support of such registration shall be returned to the applicant.~~

## **SECTION 5 AMENDING RECORD OR CERTIFICATES**

### **SECTION 5.1 General Requirements For Amending Certificates**

A. 1. Unless expressly stated elsewhere in this rule, only a person with a direct and tangible interest in the record may a request to amend a birth record will be submitted by a person with a direct and tangible interest in the certificate record in accordance with state law.

2. Unless expressly stated elsewhere in this rule, only a funeral director, coroner, physician, local registrar, health facility, next of kin, or legal representative authorized individual may a request to amend a death record will be submitted by a funeral director, coroner, physician, local registrar, health facility, or authorized individual an individual required to report the death to the State Registrar including next of kin. Applications to amend the medical certification of cause of death shall be made only by the physician or coroner who signed the medical certification in which case an amended certificate must be filed.

B. Unless otherwise provided in these regulations or in the statute, all other amendments to vital records shall be submitted and documented in the form and manner prescribed by the State Register. The submission will include:

1. The information needed to identify the record, the incorrect item as it is listed on the certificate; and the correct item as it should appear, and;

2. One or more items of documentary evidence which support the alleged facts and were established at least five years prior to the date of application for amendment or within seven years of the date of the event.

C. The State Registrar shall evaluate the evidence submitted in support of any amendment. At the discretion of the State Registrar, the amendment may be rejected if the validity or adequacy of the documentary evidence is questionable, and the applicant advised of the reasons for the action.

D. Once an amendment of an item is made on a vital event record, the item shall not be amended again except upon determination of good cause by the State Registrar.

E. Amended certificates will only be amended to the extent necessary to modify the information included in the report or court decree. The remainder of the information shown on the original certificate will remain unchanged. The certificate will be identified as "amended" or "delayed" when required by law. (d

~~The State Registrar shall determine the responsibilities and duties of each office independently.~~

~~Section 2-4 Performance and Accounting Standards for Offices Established or Designated under 25-2-103.~~

~~Local vital records offices established or designated under section 25-2-103 shall:~~

(a) ~~Conform to the Colorado Vital Statistics Act and Regulations and follow instructions issued by the State Registrar;~~

(b) ~~Submit periodic financial and workload statistics as required by the State Registrar; and~~



~~(c) — Attend periodic meetings as required by the State Registrar.~~

**SECTION 5.2 New Certificates of Birth to Amend Parentage Pursuant to FOLLOWING ADOPTION, LEGITIMATION, AND PATERNITY DETERMINATION (Section 25-2-113, C.R.S.)**

A. A new certificate of birth may be issued as to any person born in this state upon receipt of:

1. A request from an individual or, in the case of an individual under the age of eighteen, a request from parent, guardian or legal custodian and:

A certified copy of a court decree issued pursuant to Section 25-2-113, C.R.S. or

A report or certified copy of a decree concerning the adoption, or parentage of such a person from a court of competent jurisdiction outside this state.

If the surname of the child is not decreed by the court, the request for a new certificate shall specify the surname to be placed on the record.

2. A request from a birth mother and second parent who marry after the birth of a child, a certificate of marriage, and a sworn and notarized statement of parentage signed by the birth parents. If another person is shown as the parent on the current certificate, a new record may only be prepared when a determination of parentage is made by a court of competent jurisdiction. A divorce decree that does not decree parentage cannot be used to establish parentage.

3. A request from a birth mother and a second parent if the State Registrar, upon review of the original birth record determines that the second parent's name may be added pursuant to Section 25-2-112(3), C.R.S. The surname of the child may be specified as part of the acknowledgement of parentage process.

B. A new certificate of birth will not be prepared for an adoption if the court that has decreed the adoption, an adoptive parent, or the adopted person requests that no new certificate be prepared. The State Registrar is not required to amend a birth certificate following adoption if the court that has decreed the adoption, the adoptive parent, or the adopted person request that the certificate remain unchanged. A new certificate of birth is not required for an adoption if this is requested by the court that has decreed the adoption, by an adoptive parent, or by the adopted person.

**Section 5.1 — Legitimation**

~~If the natural parents marry after the birth of a child, a new certificate of birth shall be prepared by the State Registrar for a child born in this State upon receipt of a sworn acknowledgement of paternity signed by the natural parents of said child together with a certified copy of the parents' marriage record. However, if another man is shown as the father of the child on the original certificate, or if the mother was married to another man at the time of conception or birth of the child, a new certificate may be prepared only when a determination of paternity is made by a court of competent jurisdiction or following adoption. A divorce decree is not acceptable evidence regarding paternity.~~

**Section 5.2 — Determination of Paternity**

~~A new certificate of birth shall be prepared by the State Registrar for a child born in this State upon receipt of a certified copy of the court determination of paternity, together with a request from the natural mother, natural father, legal representative or person having legal custody of said child that such new certificate be prepared. If the surname of the child is not decreed by the court, the request for a new certificate shall specify the surname to be placed on the certificate.~~

C. ~~In addition to the requirements delineated in Sections 2.1 and 2.25.1, The new certificate of birth prepared after adoption, legitimation, or determination of paternity, shall be on the form in use at the time of its preparation submitted in the form and manner required by the State Registrar and the requesting party shall provide the information necessary to locate the existing record and such other information necessary to complete the certificate, such as. This includes the following items and such other information necessary to complete the certificate:~~

1. ~~a)~~ — The name of the child;
2. ~~b)~~ — The date and place of birth as transcribed from the original record~~certificate~~;
3. ~~c)~~ — The names and personal particulars of the adoptive parents or of the natural parents listed on the original birth record, whichever is appropriate;
4. ~~d)~~ — The birth number assigned to the original birth record~~certificate~~;
5. ~~e)~~ — The original filing date.

### **SECTION 5.3 Amendment of Minor Errors on Birth Certificates During the First Year**

Amendment of obvious errors, omissions or transposition of letters in words of common knowledge may be made by the State Registrar within the first year after the date of birth either upon his/her or their designee's own observation or query, or upon request of a person with a direct and tangible interest in the certificate as defined in Section 2.D. When such additions or minor amendments are made by the State Registrar, a notation as to the source of the information, together with the date the change was made and the initials of the authorized agent making the change shall be made on the record in such a way as not to become a part of any certified copy certificate issued. The certificate shall not be marked "Amended".

### **SECTION 5.4 Amendment of Registrant's Given Name(s) on Birth Certificates within the First Year**

Until the registrant's first birthday, given names may be amended upon written request of:

- A. Both parents,
- B. The mother when no second parent is listed,
- C. The father in the case of the death or incapacity of the mother,
- D. The mother in the case of the death or incapacity of the father, or
- E. The legal guardian or legal custodian of the registrant.

After one year from the date of birth the provisions of Section 4.2 must be followed to amend a given name if the name was entered incorrectly on the birth certificate. A legal change of name order must be submitted from a court of competent jurisdiction to change a given name after one year.

### **SECTION 5.5 Amendment of the Sex Designation**

Before changing the sex designation on the birth certificate, the State Registrar must:

- A. Confirm the individual is eighteen years of age or older or an emancipated minor, or if the registrant is under the age of eighteen, a parent on the birth record, a legal guardian or an authorized legal representative is requesting the amendment,

B. Confirm the name on the birth certificate and the name of the individual for whom the amendment is requested match or can be linked through the submitted documentation, and

C. 1. Receive: a certified copy of an order of a court of competent jurisdiction changing the sex of the applicant, or

2. Receive, in the form and manner prescribed by the State Registrar, a letter from a licensed treating medical provider, signed under the penalty of perjury, confirming the individual received appropriate clinical treatment for their correct sex, which also includes the provider's medical license or certificate number and the issuing U.S. State/Foreign Country of license/certificate.

a. This requirement should not be read to require an individual to undergo any specific surgery, treatment, clinical care or behavioral health care.

b. The State Registrar shall change the sex designation-pursuant to a request made under Section 5.5(C)(2) only once during an individual's lifetime. Any further amendment to the sex designation on a birth record or certificate requires a court order pursuant to Section 5.4(C)(1).

## **SECTION 5.6 OTHER AMENDMENTS TO ANY VITAL EVENT RECORD OR CERTIFICATE**

A. All items of a medical nature may be amended only upon receipt of a signed statement from those persons responsible for the completion of such items. The State Registrar may require documentary evidence to substantiate the requested amendment.

B. The State Register may authorize other amendments not expressly stated herein when such amendments are authorized by statute, do not conflict with the requirements delineated herein, and can be accomplished in the form and manner necessary to maintain the integrity of the vital event record.

~~(25-2-115)~~ **Section 5.4** ~~Existing Certificate to Be Placed in a Special File~~

~~After preparation of the new certificate, the existing certificate and the evidence upon which the new certificate was based are to be placed in a special file. Such file shall not be subject to inspection except as provided in 25-2-113.5, upon order of a court of competent jurisdiction or by the State Registrar for purposes of properly administering the vital statistics program.~~

## **SECTION 6 DEATH REGISTRATION AND RECORDS**

~~(-25-2-110)~~

### **SECTION 6.1 Acceptance of Incomplete ~~Death Certificate~~ Record**

Pursuant to Section 25-2-110, C.R.S., a certificate of death for each death, including a stillborn death, that occurs in Colorado must be filed with the state registrar or as otherwise directed by the state registrar, within five days after the death occurs and prior to final disposition. If all the information necessary to complete a report of death ~~certificate~~ is not available within the time prescribed for filing ~~of the certificate~~ the report, the funeral director or person acting as such shall ~~file the certificate completed~~ register the report with all information that is available. In all cases the medical certification must be signed by the person responsible for such certification. If the cause of death is unknown, ~~or~~ undetermined, or underpending investigation, this information will be recorded under cause of death ~~cause of death shall be shown as such on the certificate~~ report.

433 An amended report of death certificate to provideing the information missing from the original certificate,  
 434 having all other items completed and containing all required original signatures shall be signed and  
 435 registered filed with the State Registrar or as otherwise directed by the State Registrar as soon as  
 436 possible, but in all cases within 9030 days of the date the death occurred unless otherwise authorized by  
 437 the State Registrar. The death certificate shall be marked "Amended."

## 438 SECTION 6.2 Hospital or Institution May Assist in Preparation of Certificate

439 When a death occurs in a hospital or other institution and the death is not under the jurisdiction of the  
 440 coroner, the person in charge of such institution, or his~~their~~ designated representative, may initiate the  
 441 preparation of the death certificatereport as follows:

442 A. (a) Placing the full name of the decedent and the date, time and place of death on the death  
 443 certificate and obtain from the attending physician the medical certification of cause of death and  
 444 the physician's signature ; and

445 B. (b) Present the partially completed death certificate to the funeral director or person acting as  
 446 such.

## 447 SECTION 6.3 Persons Required to Keep Death Records

448 Each funeral director shall keep a record containing, at a minimum, the following information about each  
 449 dead body or fetus the funeral director handles:

450 A. The date, place, and time of receipt;

451 B. The date, place, and manner of disposition;

452 C. If the dead body or fetus is delivered to another funeral director, the date of such delivery and the  
 453 name and address of the funeral director to whom delivered; and

454 D. The items required by the certificate of death for those deaths for which the funeral director was  
 455 required to file the certificate.

## 456 SECTION 7 DELAYED REGISTRATION OF DEATH ~~(25-2-114)~~

457 The registration of a death after the time prescribed by statute and regulations shall be registered on the  
 458 regular certificate of death in the form and in the manner prescribed below:

459 A. (a) — If the attending physician or coroner at the time of death and the attending funeral  
 460 director or person who acted as such are available to complete and sign the certificate of death, it  
 461 may be completed without additional evidence and filed with the State Registrar. For those  
 462 certificates filed one year or more after the date of death, the physician or coroner and the funeral  
 463 director or person who acted as such must state in accompanying affidavits that the information  
 464 on the certificate record is based on records kept in their files.

465 B. (b) — In the absence of the attending physician or coroner and the funeral director or person  
 466 who acted as such, the certificate report may be filed by the next of kin of the decedent and shall  
 467 be accompanied by:

468 1. (1) — A signed and notarized~~n~~ affidavit of the person filing the certificate report  
 469 affirming swearing to the accuracy of the information on the certificate report, and;

470 2. (2) — Two documents that which identify the decedent, and their~~his~~ date and place of  
 471 death.

472 In all cases, the State Registrar may require additional documentary evidence to prove the facts  
473 of death.

474 A summary statement of the evidence submitted in support of the delayed registration shall be endorsed  
475 on the certificate.

#### 476 ~~SECTION 8~~ OTHER AMENDMENTS TO ANY VITAL EVENT RECORD OR CERTIFICATE

477 A. ~~All items of a medical nature may be amended only upon receipt of a signed statement from~~  
478 ~~those persons responsible for the completion of such items. The State Registrar may require~~  
479 ~~documentary evidence to substantiate the requested amendment.~~

480

481 B. ~~The State Register may authorize other amendments not expressly stated herein when such~~  
482 ~~amendments are authorized by statute, do not conflict with the requirements delineated herein,~~  
483 ~~and can be accomplished in the form and manner necessary to maintain the integrity of the vital~~  
484 ~~event record certificate.~~ B. \_\_\_\_\_

#### 485 **SECTION 8 FINAL DISPOSITION OF A BODY OR DEAD FETUS**

##### 486 **SECTION 8.1 Authorization for Final Disposition of the Body**

487 The office designated or established pursuant to Section 25-2-103, C.R.S. in the county where the death  
488 occurred ~~or, if such an office does not exist in the county where the death occurred, the coroner or the~~  
489 ~~coroner's designee in the county where the death occurred~~ shall authorize final disposition of the body in  
490 ~~the~~ a form and manner prescribed ~~and furnished~~ by the State Registrar if:

491 A. (a) \_\_\_\_\_ The funeral director or person acting as such presents a report of death  
492 ~~certificate which that~~ is fully and properly completed and includes all medical information and is  
493 signed by the physician or \_\_\_\_\_ coroner; ~~or~~

494 B. (b) \_\_\_\_\_ The funeral director or person acting as such presents a report of death certificate which  
495 ~~that~~ lists the cause of death as "pending" but which is otherwise fully and properly completed and  
496 is signed by the physician or coroner; ~~or~~

497 (c) ~~The coroner of the county where the death occurred authorizes final disposition and a copy of the~~  
498 ~~completed final disposition permit is sent to the State Registrar or his designee; or (d) \_\_\_\_\_ The~~  
499 ~~State Registrar authorizes final disposition of the body.~~

##### 500 **SECTION 8.2 State Anatomical Board**

501 Acceptance of a dead body by a representative of the State Anatomical Board shall be considered final  
502 disposition and shall be noted as "Removal-Donation" as the type of disposition on the report of death  
503 ~~certificate~~. If there was no funeral director or person acting as such, the report of death certificate shall be  
504 ~~filed-registered~~ and a final disposition permit shall be obtained by a representative of the State Anatomical  
505 Board from ~~t~~he State Registrar or as otherwise directed by the State Registrar within five days after such  
506 death occurs.

##### 507 **SECTION 89.3 Disposition of a Dead Fetus by a Hospital**

508 Disposition by a licensed hospital, including those with a subcontract with a funeral home or crematory, of  
509 the remains of a dead fetus may be made without issuance of a final disposition permit but authorization  
510 of the parent(s) must be obtained.

511

**512 SECTION 8.4 Handling of Dead Body**

~~513 A dead body kept more than twenty-four hours before burial or cremation shall be embalmed or properly~~  
~~514 refrigerated. If a deceased person had a communicable disease at the time of death, the funeral director~~  
~~515 or person acting as such shall be so notified by the hospital or the attending physician, and the funeral~~  
~~516 director or person acting as such shall consult with the local or state health officer concerning disposition~~  
~~517 of the body and shall follow the precautions indicated by the health officer.~~

~~518 A dead body shipped by common carrier shall be enclosed in a strong, tightly sealed container which will~~  
~~519 prevent the leakage of fluids or odor.~~

**520 SECTION 8.5 Permit to Accompany Remains**

~~521 A final disposition permit shall accompany the remains to their destination. The funeral director or person~~  
~~522 acting as such also shall observe requirements of the common carrier pertaining to transportation of dead~~  
~~523 bodies.~~

**524 SECTION 8.6 Disinterment and Reinterment**

~~525 The disinterment and reinterment permit shall be authority for disinterment, transportation and~~  
~~526 reinterment, and no other permit need be obtained. This regulation shall not apply to movement of bodies~~  
~~527 within the boundaries of established cemeteries. Ashes of a dead body cremated by authorized means~~  
~~528 are not considered a dead body for the purposes of this paragraph. Coroners are not required to obtain~~  
~~529 such permit if the body will be reinterred within the boundaries of the cemetery after examination.~~

**~~530 SECTION 9 — AMENDMENT OF VITAL RECORDS (25-2-115)~~****~~531 Section 9.1 — Amendment of Minor Errors on Birth Certificates During the First Year~~**

~~532 Amendment of obvious errors, omissions or transposition of letters in words of common knowledge may~~  
~~533 be made by the State Registrar within the first year after the date of birth either upon his own observation~~  
~~534 or query or upon request of a person with a direct and tangible interest in the certificate as defined in~~  
~~535 Section 11. When such additions or minor amendments are made by the State Registrar, a notation as to~~  
~~536 the source of the information, together with the date the change was made and the initials of the~~  
~~537 authorized agent making the change shall be made on the certificate in such a way as not to become a~~  
~~538 part of any certified copy issued. The certificate shall not be marked "Amended".~~

**~~539 Section 9.2 — Acknowledgement of Paternity~~**

~~540 If the mother was not married at the time of conception or birth the name of the father shall be entered if~~  
~~541 the mother and the person to be named as the father so request in writing on a form prescribed and~~  
~~542 furnished by the State Registrar. The State Registrar shall first view the original birth certificate to~~  
~~543 determine if the father's name may be added in accordance with 25-2-112(3) and if so shall provide the~~  
~~544 proper form to the mother. The surname of the child may be specified as part of the acknowledgement of~~  
~~545 paternity process.~~

**~~546 Section 9.3 — All Other Amendments~~**

~~547 Unless otherwise provided in these regulations or in the statute, all other amendments to vital records~~  
~~548 shall be supported by:~~

~~549 (a) — An affidavit setting forth:~~

~~550 (1) — Information to identify the certificate;~~

~~551 (2) — The incorrect item as it is listed on the certificate; and~~

552 (3) — The correct item as it should appear.

553 (b) — One or more items of documentary evidence which support the alleged facts and which  
554 were established at least five years prior to the date of application for amendment or  
555 within seven years of the date of the event.

556 The State Registrar shall evaluate the evidence submitted in support of any amendment, and when he  
557 finds reason to doubt its validity or adequacy, the amendment may be rejected and the applicant advised  
558 of the reasons for the action.

559 Section 9.4 — Who May Apply

560 (a) — To amend a birth certificate, application may be made by one of the parents, a legal  
561 guardian, the individual responsible for filing the certificate, or a legal representative if the  
562 registrant is less than 18 years of age. If the registrant is 18 years of age or over, the  
563 application must be made by the registrant or his legal representative.

564 (b) — To amend a death certificate, application may be made by the next of kin or the funeral  
565 director or person acting as such who signed the death certificate. Applications to amend  
566 the medical certification of cause of death shall be made only by the physician or coroner  
567 who signed the medical certification in which case an amended certificate must be filed.

568 Section 9.5 — Amendment of Registrant's Given Names on Birth Certificates Within the First Year

569 Until the registrant's first birthday, given names may be amended upon written request of:

570 (a) — Both parents, or

571 (b) — The mother in the case of a child born out of wedlock, or

572 (c) — The father in the case of the death or incapacity of the mother, or

573 (d) — The mother in the case of the death or incapacity of the father, or

574 (e) — The guardian or agency having legal custody of the registrant.

575 After one year from the date of birth the provisions of Section 9.2 must be followed to amend a given  
576 name if the name was entered incorrectly on the birth certificate. A legal change of name order must be  
577 submitted from a court of competent jurisdiction to change a given name after one year.

578 Section 9.6 — Medical Items

579 All items of a medical nature may be amended only upon receipt of a signed statement from those  
580 persons responsible for the completion of such items. The State Registrar may require documentary  
581 evidence to substantiate the requested amendment.

582 Section 9.7 — Amendment of the Same Item More than Once

583 Once an amendment of an item is made on a vital record, that item shall not be amended again except  
584 upon determination of good cause by the State Registrar.

585 Section 9.8 — Methods of Amending Certificates

586 Certificates of birth and death may be amended by the State registrar in the following manner:



(a) — Preparing a new certificate showing the correct information when the State Registrar deems that the nature of the amendment so requires. The new certificate shall be prepared on the form used for registering current events at the time of amendment. Except as provided elsewhere in these regulations, the item number of the entry that was amended shall be identified on the new certificate. In all cases, the new certificate shall show the date the amendment was made and be given the same state file number as the existing certificate. Signatures appearing on the existing certificate shall be typed on the new certificate.

(b) — Completing the item in any case where the item was left blank on the existing certificate.

(c) — Drawing a single line through the item to be amended and inserting the correct data immediately above or to the side thereof. The line drawn through the original entry shall not obliterate such entry.

(d) — A certificate of birth amended pursuant to the provisions of 25-2-115(4) shall be amended by preparing a new certificate. The item number relating to the sex of the registrant that was amended shall not be identified on the new certificate or on any certified copies of the certificate that may be issued.

In all cases, there shall be inserted on the certificate a statement identifying the affidavit and documentary evidence used as proof of the correct facts, the date the amendment was made, and the initials of the person making the change. As required by statute or regulation, the certificate shall be marked "Amended".

## **SECTION 409 RECORD PRESERVATION AND RELEASE**

### **SECTION 940.1 Record preservation and destruction**

When an authorized reproduction of a vital record has been properly prepared by the State Registrar and when all steps have been taken to insure the continued preservation of the information, the record from which such authorized reproduction was made may be disposed of by the State Registrar. Such record may not be disposed of, however, until the quality of the authorized reproduction has been tested to insure that acceptable certified copies can be issued and until a security copy of such document has been placed in a secure location removed from the building where the authorized reproduction is housed.

The State Registrar shall offer the original documents from which the authorized reproductions are made to the State Archives. The State Archives may be allowed to retain permanently such records provided they adhere to the restrictions in the vital statistics law related to access to such records. If the State Archivist does not wish to place such records in his files, the State Registrar shall be authorized to destroy the documents. Such destruction shall be by approved methods for disposition of confidential or sensitive documents.

### **SECTION 940.2 Disclosure of Records**

To protect the integrity of vital records:

A. (a) — The State Registrar or other custodians of vital records shall not permit inspection of, or disclose information contained in, vital statistics records, or copy or issue a copy of all or part of any such record unless he is satisfied that the applicant has a direct and tangible interest in such record

B. (1) — The registrant, a member of his immediate family, his legal guardian, or their respective legal representatives shall be considered to have a direct and tangible interest. Others may demonstrate a direct and tangible interest when information is needed for determination or protection of a personal or property right.



G. (2) \_\_\_\_\_ The term "legal representative" shall include an attorney, physician, funeral director, or other authorized agent acting on behalf of the registrant or his family.

D.A. (3) \_\_\_\_\_ The natural parents of adopted children, when neither has custody, and commercial firms or agencies requesting listings of names and addresses shall not be considered to have a direct and tangible interest.

E.B. (b) \_\_\_\_\_ The State Registrar may permit the use of data from vital statistics records for statistical or research purposes, subject to such conditions as the State Registrar may impose. No data shall be furnished from records for research purposes until the State Registrar has prepared in writing, the conditions under which the records or data will be used and received an agreement signed by a responsible agent of the research organization agreeing to conform to such conditions.

F.C. (c) \_\_\_\_\_ The State Registrar ~~or the local custodian~~ may disclose data from a vital statistics record to federal, state, county, or municipal agencies of government, or designees of such agencies of government, that which request such data in the conduct of their official duties, or any other agency that demonstrates it is acting in the interest of the registrant.

G.D. \_\_\_\_\_ The State Registrar ~~or the local custodian~~ may disclose data from vital statistics records to the extent necessary for the treatment, control, investigation, and prevention of diseases and conditions dangerous to the public health. Every effort shall be made to limit disclosure of protected health information or personal identifying information to the minimal amount necessary to accomplish the public health purpose.

H. (d) \_\_\_\_\_ Information from vital statistics records indicating a birth out of wedlock may be disclosed only if it can be shown that disclosure of the information will be of benefit to the registrant.

I.E. (e) \_\_\_\_\_ The State Registrar or local custodian shall not issue a certified copy of a record until a signed application has been received from the applicant. Whenever it shall be deemed necessary to establish an applicant's right to information from a vital record, the State Registrar or local custodian may also require identification of the applicant or a sworn statement. Other procedures may be established by the State Registrar.

J.F. (f) \_\_\_\_\_ Nothing in this Section shall be construed to permit disclosure of information contained in the "Information for Medical and Health Use Only" section of the birth certificate unless specifically authorized by the State Registrar for statistical or research purposes or if authorized by a court of competent jurisdiction.

(c) \_\_\_\_\_ Confidential verification of the facts contained in a vital record may be furnished by the State Registrar to any federal, state, county, or municipal government agency or to any other agency representing the interest of the registrant, subject to the limitations as indicated in (a) above. Such confidential verifications shall be on forms prescribed and furnished by the State Registrar or on forms furnished by the requesting agency and acceptable to the State Registrar; or the State Registrar may authorize the verification in other ways when it shall prove in the best interests of his office.

### SECTION 13 — PERSONS REQUIRED TO KEEP RECORDS (25-2-111)

Each funeral director shall keep a record containing, at a minimum, the following information about each dead body or fetus the funeral director handles:

(a) \_\_\_\_\_ The date, place, and time of receipt;

(b) \_\_\_\_\_ The date, place, and manner of disposition;

~~(c) If the dead body or fetus is delivered to another funeral director, the date of such delivery and the name and address of the funeral director to whom delivered; and~~

~~(d) The items required by the certificate of death for those deaths for which the funeral director was required to file the certificate.~~

## **SECTION 1044 STATISTICAL REPORTS REQUIRED ~~(25-2-116)~~**

Spontaneous fetal death means the expulsion or extraction of a product of human conception resulting in other than a live birth and which is not an induced termination of pregnancy.

Induced termination of pregnancy means the purposeful interruption of pregnancy with the intention other than to produce a live-born infant or to remove a dead fetus and which does not result in a live birth.

Each spontaneous fetal death of 20 completed weeks gestation or more which occurs in this State, shall be reported directly to the State Registrar on the form prescribed and furnished by the State Registrar. The funeral director or person acting as such or a licensed hospital, if the dead fetus was delivered and final disposition occurred in a hospital, shall complete and file a Certificate of Fetal Death within five days after delivery.

Spontaneous fetal deaths of less than 20 completed weeks gestation and each induced termination of pregnancy which occurs in this State, regardless of the length of gestation, shall be reported directly to the State Registrar on the prescribed Report of Spontaneous or Induced Abortion within five days by the person in charge of the institution in which the event occurred. If the induced termination of pregnancy was performed outside an institution, the attending physician or his designee shall prepare and file the report.

Reports of spontaneous fetal deaths of less than 20 completed weeks gestation and all reports of induced termination of pregnancy are to be used only for compilation of statistical reports and are not to be incorporated into the official records of the office of the State Registrar. The State Registrar is authorized to dispose of such reports when all statistical processing of the records has been accomplished.

All reports required under this Section 104 are considered to be vital statistics records subject to the confidentiality provisions of 25-2-117 CRS and Section 44-9.2 of these rules.

## **SECTION 1245 MATCHING OF BIRTH AND DEATH CERTIFICATES**

To protect the integrity of vital records and to prevent the fraudulent use of birth certificates of deceased persons, the State Registrar shall establish a program to match death certificates with the corresponding birth certificates. This will be done for all deaths occurring in Colorado within the first year of life, at a minimum. Records will be matched for Colorado residents and births occurring in Colorado to the extent possible upon receipt of appropriate records from other states where the deaths occurred. Written guidelines shall be established which provide the standards for determining that a match does exist.

The date of death, the state where the death occurred, and the death certificate number shall be posted to the birth certificate.

## **SECTION 12326 COLORADO VOLUNTARY ADOPTION REGISTRY ~~(25-2-113.5)~~**

### **Section 12326.1 Authority and Purpose for Establishing Rules and Regulations**

~~These regulations are being promulgated pursuant to CRS 1973, Section 25-2-113.5, C.R.S. which states:~~

"A birth parent shall not be matched with the qualified adult adoptee without the consent of the other birth parent unless:

- (a) There is only one birth parent listed on the birth certificate; or
- (b) The other birth parent is deceased; or
- (c) The other birth parent is unable to be located by the Department of Public Health and Environment after an exhaustive search, the cost of said search to be fully funded by the birth parent seeking a match, said search to be in accordance with the rules and regulations promulgated by the department.” ~~(Emphasis added.)~~

~~The purpose of these regulations is to establish rules governing the conduct of searches. If the second birth parent is located, he will be advised of the adoptee's request for identifying information. If the birth parent does not consent, the Department of Health shall not exchange current identifying information between the adult adoptee and the seeking birth parent.~~

## **Section 1~~2326~~.2 Search Procedures to Locate a Second Birth Parent**

The search shall be conducted by the State Registrar ~~of Vital Statistics or his agent~~. To maintain confidentiality, the State Registrar ~~or his agent~~ shall not divulge the reason for the inquiry to any person except the second birth parent.

Based on information from the birth parent seeking a match as well as information in the State Registrar's sealed file, the State Registrar shall perform, at a minimum, the following procedures to locate the second birth parent:

- A. ~~(a)~~ If the birth parent is presumed dead, death records in those state(s) where the death may have occurred must be checked.
- B. ~~(b)~~ Colorado motor vehicle records, e.g., car registration and driver's license records, in states where the birth parent was presumed to have resided must be checked.
- C. ~~(c)~~ Birth records in the state where the birth parent was born must be checked.
- ~~D. (d) Directories of towns where the birth parent was presumed to have resided must be checked.~~
- E.D. ~~(e)~~ The Index of Marriages and Divorces in the Colorado State Registrar's office and the county clerk's office must be checked.
- ~~(f) The Social Security Administration and Veteran's Administration must be contacted.~~
- ~~(g) The adoption agency that placed the adoptee must be contacted,~~
- ~~(h) The Colorado court that handled the adoption must be contacted.~~
- ~~(i) The hospital where the adoptee was born must be contacted.~~

Efforts to locate the second birth parent will occur ~~The referenced agencies will be contacted by the State Registrar~~ within 30 days of the initial match between the adult adoptee and seeking birth parent. The State Registrar will await responses to inquiries for at least 60 days. If the second birth parent has not been located within 90 days of the initial match, the State Registrar shall exchange the current identifying information between the adult adoptee and the seeking birth parent. If the second parent is located, they will be advised of the adoptee's request for identifying information. If the birth parent does not consent, the Department of Public Health and Environment shall not exchange current identifying information between the adult adoptee and the seeking birth parent through the voluntary adoption registry.

753 **Section 12326.3** **Fees Schedule**

754 The birth parent seeking the match shall be charged the full cost of ~~the employee performing the doing~~  
755 ~~said search~~ including plus actual expenses ~~including long distance for~~ phone charges and fees incurred to  
756 perform the search ~~charged by other states for vital records and searches.~~  
757

**COLORADO**

Board of Health

Department of Public Health &amp; Environment

# Notice of Public Rule-Making Hearing

December 19, 2018

ID #: 124

NOTICE is hereby given pursuant to the provisions of §24-4-103, C.R.S.; that the Colorado Board of Health will conduct a public rule-making hearing on:

**Date:** December 19, 2018**Time:** 10:00 AM**Place:** Sabin-Cleere Conference Room, Building A, 1st Floor, 4300 Cherry Creek Drive South, Denver, CO 80246

To consider the promulgation/amendments or repeal of:

---

**CCR Number(s)**

---

5 CCR 1006-1, Vital Statistics

---

The proposed rules have been developed by the following division or office of the Colorado Department of Public Health and Environment:

Center for Health and Environmental Data

Statute(s) that requires or authorizes the Board of Health to promulgate, amend, or repeal this rule:

---

**Statute(s)**

---

§25-2-103, C.R.S.

---

**Agenda and Hearing Documents**

The Board of Health agenda and the proposed rules, together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis will be available, at least seven (7) days prior to the meeting, on the Board's website, <https://colorado.gov/cdphe/boh>.

For specific questions regarding the proposed rules, contact the division below:

Vital Statistics, Center for Health and Environmental Data Division, 4300 Cherry Creek Drive S., Denver, CO 80246, (303) 692-2164.

**Participation**

The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to three minutes or less depending on the number of persons wishing to comment.

**Written Testimony**

Pursuant to 6 CCR 1014-8, §3.02.1, written testimony must be submitted no later than five (5) calendar days prior to the rule-making hearing.

Persons wishing to submit written comments should submit them to: Colorado Board of Health, ATTN: Board of Health Unit, Program Assistant, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: [cdphe.bohrequests@state.co.us](mailto:cdphe.bohrequests@state.co.us)

**Written testimony is due by 5:00 p.m., Thursday, December 13, 2018.**

A handwritten signature in cursive script, appearing to read "Deborah Nelson".

Deborah Nelson, Board of Health Administrator

Date: 2018-10-11T10:44:34



# Notice of Proposed Rulemaking

**Tracking number**

2018-00606

**Department**

1504 - Department of Higher Education

**Agency**

1504 - Historical Society

**CCR number**

8 CCR 1504-10

**Rule title**

INCOME TAX CREDIT FOR QUALIFIED COSTS INCURRED IN PRESERVATION OF  
QUALIFIED RESIDENTIAL STRUCTURES

**Rulemaking Hearing****Date**

12/03/2018

**Time**

03:00 PM

**Location**

History Colorado Center Lanny & Sharon Martin Room, 1200 Broadway Denver, CO 80203

**Subjects and issues involved**

Develop standards for the approval of the substantial rehabilitation of qualified residential structures for which a tax credit is claimed (Section 39-22-514.5(4)(b)). Develop rules on standards and reporting for certified local governments acting as a reviewing entity for the substantial rehabilitation tax credits of a residential structure (Section 39-22-514.5(5.50)(III)(c)). Develop rules necessary to further implement tax credits for the substantial rehabilitation of qualified residential structures (Section 39-22-514.5 (5.5)(III)(e)).

**Statutory authority**

Section 39-22-514.5 C.R.S.

**Contact information****Name**

Mark Rodman

**Title**

Chief Preservation Programs Officer, Deputy State Historic Preservation Officer

**Telephone**

303-866-3067

**Email**

mark.rodman@state.co.us

## **DEPARTMENT OF HIGHER EDUCATION**

### **Historical Society**

## **INCOME TAX CREDIT FOR QUALIFIED COSTS INCURRED IN PRESERVATION OF QUALIFIED RESIDENTIAL STRUCTURES**

### **STATEMENT OF BASIS AND PURPOSE:**

House Bill 14-1311 required the establishment and promulgation of criteria and procedures by which rehabilitation of Qualified Residential Structures qualify for a tax credit. House Bill 18-1190, which amended and reauthorized the tax credit through December 31, 2029, directed the State Historical Society of Colorado to establish and promulgate criteria, as well as to promulgate rules for standards and reporting by Certified Local Governments acting as Reviewing Entities. These Rules apply to the rehabilitation of historic residential structures under CRS § 39-22-514.5; they do not apply to the rehabilitation of historic commercial structures. Projects under CRS § 39-22-514 are governed by separate rules. See 8 CCR 1504-6.

The purpose of these Rules is to provide a uniform process for the State Historic Preservation Officer, State Historical Society of Colorado, and participating Certified Local Governments. This will ensure that taxpayers applying for tax credits for Qualified Residential Structures receive prompt and consistent review of proposed and completed rehabilitation work and that reporting of all tax credit certificates is timely and complete.

### **1. IMPLEMENTATION**

- 1.1 These criteria and procedures implement House Bill 14-1311, as amended by House Bill 18-1190, and should be used and read in conjunction with those laws (codified at CRS § 39-22-514.5). The full requirements of those laws are not repeated in these Rules.
- 1.2 The 2018 amendments to the tax credit statute made in House Bill 18-1190 shall apply to residential projects in process or commenced on or after May 30, 2018.
- 1.3 Owners with projects in a rural community should work with their Reviewing Entity, as projects in qualifying rural communities may be eligible for enhanced tax credits after January 1, 2020.

### **2. DEFINITIONS**

- 2.1 "Certified Historic Structure" with regard to a residential structure means a property located in Colorado that has been certified by the Historical Society or other Reviewing Entity because it has been:
  - (a) Listed individually on, or as a contributing property in a district included within, the national register of historic places;
  - (b) Listed individually on, or as a contributing property in a district that is included within, the state register of historic properties pursuant to the provisions of § 24-80.1-101 et seq.; or



(c) Listed individually by, or as a contributing property within a designated historic district of, a certified local government.

2.2 “Certified Local Government” means any local government that has been certified by the Historical Society in accordance with federal law.

2.3 “Certified Rehabilitation” means repairs or alterations to a Certified Historic Structure that have been certified by the Historical Society or other Reviewing Entity as meeting the standards for rehabilitation of the United States Secretary of the Interior. These Rules provide information about those standards.

2.4 “Contributing Property” means property that adds to the sense of time, place, and historical development of a historic district as determined by the Historical Society or other Reviewing Entity.

2.5 “Designated” means established by local preservation ordinance.

2.6 “Historical Society” means the State Historical Society of Colorado, also known as History Colorado, or any successor entity.

2.6 “Owner” as it applies to a residential structure means any taxpayer filing a state tax return or any entity that is exempt from federal income taxation pursuant to section 501(c) of the internal revenue code, as amended, that owns:

(a) Title to a qualified structure;

(b) Prospective title to a qualified structure in the form of a purchase agreement or an option to purchase;

(c) A leasehold interest in a qualified residential structure for a term of not less than five years.

2.7 “Qualified residential structure” means a non-income producing and owner-occupied residential property located in Colorado that is:

(a) At least fifty years old; and

(b) Listed individually on, or as a Contributing Property in a district included within, the state register of historic properties pursuant to CRS § 24-80.1-101 et seq.;

(C) Listed individually by, or as a Contributing Property that is included within a designated historic district of, a Certified Local Government.

2.8 “Rehabilitation Plan” means construction plans and specifications for the proposed rehabilitation of a Qualified Residential Structure that is in sufficient detail to enable the Reviewing Entity to evaluate whether the structure is in compliance with the standards set forth in these Rules. These Rules provide information below about the details that must be included in a Rehabilitation Plan.

2.9 “Reviewing Entity” means:

(a) A Certified Local Government that has decided to perform the duties specified in these Rules; or

(b) The Historical Society if the Qualified Residential Structure either is not located within the territorial boundaries of any Certified Local Government or is located within the territorial boundaries of a Certified Local Government that has decided not to perform the duties specified in these Rules.

### **3. CERTIFIED LOCAL GOVERNMENTS ACTING AS REVIEWING ENTITIES**

3.1 Each Certified Local Government must determine by resolution or ordinance to act as a Reviewing Entity.

3.2 Each Certified Local Government will continue to serve as a Reviewing Entity until:

(a) The determination is rescinded by the Certified Local Government by resolution or ordinance;

(b) The Certified Local Government fails to report credits issued to the Historical Society as required in Section 12 of these Rules and is notified by Historical Society of the termination of its Reviewing Entity status; or

(c) The Certified Local Government fails to attend training provided by the Historical Society for Reviewing Entities for more than 24 months and is notified by the Historical Society of the termination of its Reviewing Entity status.

3.3 A Certified Local Government may only review applications for Certified Historic Structures located within its jurisdictional boundaries.

3.4 A Certified Local Government must make publicly available any designated local preservation requirements. If local preservation ordinances or design guidelines apply to a particular project, a Certified Local Government will make compliance with the local preservation ordinances and design guidelines a condition of approval of either an application and Rehabilitation Plan or a request for final approval of qualified rehabilitation expenses.

3.5 The Historical Society may audit the process, procedures, and decisions of any CLG serving as a reviewing entity.

### **4. APPLICATION AND REHABILITATION PLAN FOR PRELIMINARY APPROVAL OF REHABILITATION WORK**

4.1 Application for preliminary approval of proposed rehabilitation work shall be made to the Reviewing Entity on a form developed by the Historical Society. The Historical Society's application form shall be used by all Reviewing Entities, and all Reviewing Entities shall make this form available to the public. The form shall include the applicant(s)' signed approval to allow the Reviewing Entity reasonable access to the property.

4.2 In addition to the Historical Society application form, an applicant must include a Rehabilitation Plan. The Rehabilitation Plan consists of a written description of work to be completed; construction plans and specifications; photographs of the current

condition of the property; and estimated, itemized costs of the proposed rehabilitation work.

- 4.3 The Rehabilitation Plan must demonstrate work in conformity with the Secretary of the Interior's Standards for Rehabilitation. These standards are contained in federal regulations issued by the National Park Service, Department of the Interior, 36 Code of Federal Regulations § 68.3(b) (current through September 27, 2018). The federal regulations are available to the public for inspection or copying at a reasonable charge at the offices of the Historical Society, 1200 Broadway, Denver, CO 80203. The federal regulations also are publicly available at <https://www.nps.gov/tps/standards/rehabilitation.htm>. These Rules do not include any later amendments or editions of the federal regulations or guidance.
- 4.4 If an application is made to a Certified Local Government, the applicant must work with the Certified Local Government to ensure that the Rehabilitation Plan addresses any requirements of local ordinances or design guidelines.
- 4.5 At the time an applicant submits an application and Rehabilitation Plan, the applicant shall pay a non-refundable, reasonable application fee.

## **5. APPLICATIONS FOR PRELIMINARY APPROVAL OF PRIOR COMPLETED REHABILITATION WORK**

- 5.1 Applications may include qualified rehabilitation expenditures incurred within 24 months prior to the submission of an application and Rehabilitation Plan.

- (a) Work undertaken within 24 months prior to submission of an application for preliminary approval may be included in the Rehabilitation Plan provided that the requirements of sections 3, 4, and 5 of these Rules are met.
- (b) Work undertaken more than 24 months prior to submission of an application for preliminary approval may not be included in the Rehabilitation Plan and those expenditures may not be submitted for credit approval.

- 5.2 Applications for prior completed rehabilitation work will be approved provided:

- (a) The applicant submits to the Reviewing Entity 1) the items required of all applicants outlined in Section 4 of these Rules, including photographs showing the condition of the Qualified Residential Structure prior to commencing any rehabilitation; 2) a written description of the condition of Qualified Residential Structure prior to commencing any rehabilitation with a declaration stating that the information provided is true and correct under penalty of perjury, signed by a person with knowledge of the structure; 3) a written description of the rehabilitation work previously completed; 4) receipts for goods and services demonstrating that qualified rehabilitation expenses for work previously completed were for qualified rehabilitation work and were undertaken within the 24 month period prior to the submission of the application; and 5) the items required of all applicants outlined in Sections 10.2 and 10.3 of these Rules for the work that was previously completed; and
- (b) The Reviewing Entity finds that the applicant's documentation for the already completed work demonstrates conformity with Section 8 of these Rules.

5.2 If the application for prior completed work is made to a Certified Local Government, the applicant must work with the Certified Local Government to ensure that the prior completed work complies with the requirements of local ordinances.

5.3 Applicants who complete rehabilitation work prior to the submission of an application and Rehabilitation Plan do so at their own risk as the prior completed work may not conform to the standards outlined in these Rules.

## **6. RESPONSE BY REVIEWING ENTITY TO APPLICATIONS FOR PRELIMINARY APPROVAL AND REHABILITATION PLANS**

6.1 Within ninety (90) calendar days of receipt of an application and Rehabilitation Plan, the Reviewing Entity shall notify the applicant in writing of its decision to: grant preliminary approval of the application and Rehabilitation Plan, deny approval, or table the application pending receipt of specified additional materials or information.

6.2 If a Reviewing Entity tables an application, the applicant must supplement with the required information within 90 days or a new application will be required.

## **7. FUNCTIONALLY RELATED STRUCTURES**

7.1 Determination for treatment of properties as a single certified historic property or multiple certified historic properties shall be based on federal regulations issued by the National Park Service, Department of the Interior, 36 Code of Federal Regulations § 67.4(e) (effective May 26, 2011) and 36 Code of Federal Regulations § 67.6(b)(4-5) (effective June 27, 2011). The National Park Service Historic Preservation Tax Incentives Program has issued additional guidance to interpret these regulations: "Functionally Related Buildings – Additional Guidance for Multiple-Building Projects." The federal guidance was issued December 2016, revised March 2017. Copies of the federal regulations and the additional guidance are available to the public at the offices of the Historical Society, 1200 Broadway, Denver, CO 80203. The federal regulations are available at <https://www.nps.gov/tps/tax-incentives/taxdocs/36cfr67.pdf>. The additional guidance from the National Park Service is available at <https://www.nps.gov/tps/tax-incentives/taxdocs/functionally-related-additional-guidance-rev-3-2017.pdf>. These Rules do not include any later amendments or editions of the federal regulations or guidance.

## **8. QUALIFIED REHABILITATION EXPENDITURES**

8.1 "Qualified rehabilitation expenditures" are defined as exterior improvements and interior improvements undertaken to restore, rehabilitate, or preserve the historic character of a Qualified Residential Structure that meet the Standards for Rehabilitation of the United States Secretary of the Interior. These standards are contained in federal regulations issued by the National Park Service, Department of the Interior, 36 Code of Federal Regulations § 68.3(b) (current through September 27, 2018). The federal regulations are available to the public for inspection or copying at a reasonable charge at the offices of the Historical Society, 1200 Broadway, Denver, CO 80203. The federal regulations also are publicly available at <https://www.nps.gov/tps/standards/rehabilitation.htm>. These Rules do not include any later amendments or editions of the federal regulations or guidance.

(a) "exterior improvements" is limited to any one or more of the following: roof

replacement or repair; exterior siding replacement or repair; masonry repair, re-pointing, or replacement; window repair or replacement; door repair or replacement; woodwork and trim repair or replacement; foundation repair or replacement; and excavation costs associated with foundation work.

(b) "interior improvements" is limited to one or more of the following: electrical repairs and upgrades; plumbing repairs and upgrades; heating, venting, and air conditioning repairs and upgrades; repair of existing interior walls, ceilings, and finishes; repair or replacement of existing woodwork and trim; insulation; refinishing or replacing historic floor materials in-kind, excluding carpeting.

(c) Reconstructing missing elements when there is sufficient historical documentation to guide the reconstruction is an allowable expenditure.

8.2 Improvements undertaken due to normal wear and tear on a property do not qualify, nor does routine or periodic maintenance, such as cleaning, routine painting, minor repairs, general periodic upkeep, redecorating or any purely cosmetic change that is not part of an overall rehabilitation or that does not enhance the property's historic character.

8.3 Rehabilitation work, on vegetative or hard surface landscaping, is not a qualified cost.

## **9. TIME PERIOD TO COMPLETE PRELIMINARILY APPROVED WORK**

9.1 Applicants do not have a particular time period in which to complete their work following the preliminary approval of an application and Rehabilitation Plan. However, no tax credit shall be available where work is completed after the expiration of the tax credit program.

## **10. REQUESTS FOR FINAL APPROVAL OF COMPLETED REHABILITATION WORK**

10.1 Within sixty (60) days of completion of the rehabilitation work described in the approved application and Rehabilitation Plan, the applicant shall submit a request for final approval of the rehabilitation work to the Reviewing Entity.

10.2 Requests for final approval of completed rehabilitation work shall be made on a form developed by the Historical Society. The Historical Society's final approval request form shall be used by all Reviewing Entities, and all Reviewing Entities shall make this form available to the public. The form shall include a certification by the applicant that qualified rehabilitation expenditures were incurred in connection with an approved Rehabilitation Plan and the applicant's signed approval to allow the Reviewing Entity reasonable access to the property.

10.3 With the form, the applicant also shall submit: "after" interior and exterior photographs documenting the completed rehabilitation work; an itemized accounting of all qualified rehabilitation expenditures incurred; and the applicant's estimate of the tax credit for which the Owner is eligible. For rehabilitations that are not part of a major disaster area or a rural community, the estimate should be twenty percent of qualified expenses up to \$50,000.

10.4 Applicants who have projects in a major disaster area or a rural community should work with their Reviewing Entity to determine whether they may qualify for a greater tax credit.

## **11. REVIEWING ENTITY'S EVALUATION OF REQUESTS FOR FINAL APPROVAL AND ISSUANCE OF TAX CREDITS**

11.1 Within ninety (90) calendar days of receipt of a complete request for final approval of completed rehabilitation work, the Reviewing Entity shall review and respond to the request for approval.

(a) If the Reviewing Entity determines that the completed rehabilitation expenses are qualified rehabilitation expenditures, the Reviewing Entity will issue a verification form. This verification form will serve as the tax credit certificate. The verification form shall be developed by the Historical Society and shall be used by all Reviewing Entities. The verification form shall include the total qualified rehabilitation expenses for the project, the project completion date, the Review Entity approval date, the percentage used to calculate the credit, the total amount of the tax credit issued and a tax credit certificate number for the specific project, which will be issued by the Historical Society.

(b) If an approval request lacks the documentation outlined in Section 10 or if the Reviewing Entity determines that additional work must be completed for the project to qualify for a tax credit, the Reviewing Entity may table the approval request and require the applicant to resubmit the request for final approval. The Reviewing Entity will have 90 days to review a resubmitted approval request.

(c) If a Reviewing Entity determines that a completed rehabilitation fails to demonstrate qualified rehabilitation expenditures, no verification form shall be issued, and the Reviewing Entity will inform the applicant in writing.

11.2 The Reviewing Entity will make a final determination on the amount of the tax credit to be issued.

11.3 For a tax credit to issue, qualified rehabilitation expenditures must exceed five thousand dollars. Projects with less than five thousand dollars in qualified rehabilitation expenditures have not engaged in substantial rehabilitation and, therefore, do not qualify for a credit.

11.4 For a tax credit to issue, a property owner shall not have received a cumulative total of greater than \$50,000 in credits for the property for which the credit is claimed within the 10-year period preceding request for final approval.

11.5 Taxpayers should retain the tax credit number specific to their project from the verification form for income tax filing purposes.

## **12. REPORTING TAX CREDITS**

12.1 All Reviewing Entities shall provide a report to the Historical Society of all tax credit certificates issued by March 1<sup>st</sup>, June 1<sup>st</sup>, September 1<sup>st</sup>, and December 1<sup>st</sup> annually.

12.2 The Historical Society shall provide a report to the Department of Revenue specifying the ownership of tax credits by March 15<sup>th</sup>, June 15<sup>th</sup>, September 15<sup>th</sup>, and December 15<sup>th</sup> annually.

### **13. APPEALS**

13.1 Any Owner or any duly authorized representative of an Owner may appeal any final determination made by a Reviewing Entity to the Historical Society including, without limitation, any denials of applications for preliminary or final approval. The Owner or the Owner's representative shall submit an appeal in writing within thirty (30) days after receipt by the Owner or the Owner's representative of the final determination at issue.

13.2 The Historical Society will review an appeal and issue its decision within ninety (90) days of receipt of the appeal.

13.3 An appeal from a decision of the Historical Society shall be reviewed by the Archaeology and Historic Preservation Committee of the Board of the State Historical Society, except for those appeals governed by section 13.4 of these Rules.

13.4 Appeals of decisions that a property is not a Contributing Property: These appeals shall follow the same timelines as other appeals. In the appeal, the applicant must provide additional information to the Reviewing Entity about the significance of the property and request a final review on the basis of the additional information. If the property at issue has never been specifically designated as a Contributing Property, but is one that falls within a designated local historic district, the appeal will be heard by the Certified Local Government. If the property at issue is one that was specifically designated as a Non-Contributing Property by local ordinance or in a State Register of Historic Properties or National Register of Historic Places nomination, then the applicant may not appeal the decision pursuant to these Rules, but must work with the entity that made the designation to amend the designation following the amendment procedures of the designating entity.



**NOTICE OF RULEMAKING HEARING**  
**ON INCOME TAX CREDIT FOR QUALIFIED COSTS INCURRED IN PRESERVATION**  
**OF QUALIFIED RESIDENTIAL STRUCTURES**

Pursuant to Colorado Revised Statutes, Title 24, Article 4-101, CRS, you are hereby advised that the History Colorado will hold a public rule making hearing on Monday, December 3, 2018 at 3:00 p.m., at 1200 Broadway, Lanny & Sharon Martin Room, Denver, Colorado 80203, for consideration of the following:

8 CCR 1504-10 - the regulations and procedures implementing the Colorado Main Job Creation and Main Street Revitalization Act (CRS 39-22-514.5).

December 3, 2018  
3:00 PM  
History Colorado Center  
Lanny & Sharon Martin Room  
1200 Broadway  
Denver, CO 80203

**PUBLIC PARTICIPATION:** History Colorado welcomes public participation in the rulemaking process. Any person may submit written comments by mail, e-mail, or in person at Office of Archaeology and Historic Preservation any time prior to the hearing. In addition, any person may participate in the hearing described above and offer oral testimony during the public comment period. History Colorado may place a time limit on public comments during the hearing depending on the number of people who wish to comment. Speakers are asked to be concise and avoid repeating comments made by others or reading previously submitted written statements.

Please include your name, occupation, address, and telephone number when submitting comments. The deadline for written or e-mailed statements or comments to be included in the hearing packet is the end of the business day on Wednesday, November 28, 2018.

Persons or groups who know in advance they would like to address History Colorado and the Office of Archaeology and Historic Preservation in person during the hearing are asked to notify History Colorado via e-mail to [mark.rodman@state.co.us](mailto:mark.rodman@state.co.us) by the close of business on Wednesday November 28, 2018 with an estimate of the time needed for comments. This is to ensure adequate time is allocated to the agenda.

**CONTACT INFORMATION:** To e-mail comments regarding this proposed rulemaking, please attach a file (PDF preferred) to your e-mail and send to [mark.rodman@state.co.us](mailto:mark.rodman@state.co.us)

To mail comments regarding this proposed rulemaking, please send via first class mail to:  
History Colorado - Office of Archaeology and Historic Preservation  
Attn: Mark Rodman Rulemaking  
1200 Broadway  
Denver, CO 80203

**COPIES OF DRAFT RULE:** A draft of the proposed rule revision is posted on History Colorado's Office of the State Archaeologist's website at <https://www.historycolorado.org/preservation-tax-credits>



# Notice of Proposed Rulemaking

**Tracking number**

2018-00570

**Department**

500,1008,2500 - Department of Human Services

**Agency**

2503 - Income Maintenance (Volume 3)

**CCR number**

9 CCR 2503-5

**Rule title**

ADULT FINANCIAL PROGRAMS

## Rulemaking Hearing

**Date**

12/07/2018

**Time**

08:30 AM

**Location**

1575 Sherman Street

**Subjects and issues involved**

On October 11, 2018, the Social Security Administration (SSA) announced a 2.8% Cost of Living Adjustment (COLA) for all Social Security and Supplemental Security Income recipients effective December 31, 2018. Colorado has a Maintenance of Effort requirement with the Social Security Administration that requires the State to pass through the COLA to recipients in order to spend at least the same amount in the current year as in the year prior. This means an increase in Adult Financial assistance. These rules propose an increase to the Supplemental Security Income (SSI) maximum payment by twenty one dollars (\$21) ( $\$750 \times 2.8\% = \$21$ ) to \$771 per month.

This rule will revise the Colorado Department of Human Services rules to increase the Old Age Pension (OAP) grant standard to \$809, the Aid to the Needy Disabled Colorado Supplement (AND-CS) grant standard to \$771, and the Adult Foster Care (AFC) grant standard to \$1403 in order to pass along the \$21 COLA increase. The components of the grant standard will be adjusted accordingly.

**Statutory authority**

26-1-107, C.R.S. (2018)  
26-1-109, C.R.S. (2018)  
26-1-111, C.R.S. (2018)  
24-4-103, C.R.S. (2018)  
26-2-111, C.R.S. (2018)  
20 CFR 416 et seq.

**Contact information****Name**

Erin Barajas

**Title**

Rule Author

**Telephone**

303-866-2467

**Email**

erin.barajas@state.co.us

**Title of Proposed Rule: Old Age Pension, Aid to the Needy Disabled Colorado Supplement, and Adult Foster Care Cost of Living Adjustment Increase for 2019**

**CDHS Tracking #:** 18-09-10-02

Office, Division, & Program: Rule Author: Erin Barajas  
Office of Economic Security,  
Employment & Benefits  
Division, Adult Financial  
Programs

Phone: 303-866-2467

E-Mail:  
erin.barajas@state.co.us

**RULEMAKING PACKET**

**Type of Rule:** (complete a and b, below)

- a. ☒ Board ☐ Executive Director  
b. ☒ Regular ☐ Emergency

**This package is submitted to State Board Administration as:** (check all that apply)

☐ AG Initial Review ☐ Initial Board Reading ☒ AG 2<sup>nd</sup> Review ☒ Second Board Reading / Adoption

**This package contains the following types of rules:** (check all that apply)

Number  
3 Amended Rules  
New Rules  
Repealed Rules  
Reviewed Rules

What month is being requested for this rule to first go before the State Board?	November
What date is being requested for this rule to be effective?	January 1, 2019
Is this date legislatively required?	No

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

**Office Director Approval:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION**

Comments:

Estimated Dates: 1st Board November 2, 2018 2nd Board December 7, 2018 Effective Date January 1, 2019

**STATEMENT OF BASIS AND PURPOSE**

**Title of Proposed Rule: Old Age Pension, Aid to the Needy Disabled Colorado Supplement, and Adult Foster Care Cost of Living Adjustment Increase for 2019**

**CDHS Tracking #: 18-09-10-02**

Office, Division, & Program: Rule Author: Erin Barajas  
Office of Economic Security,  
Employment & Benefits  
Division, Adult Financial  
Programs

Phone: 303-866-2467

E-Mail:  
erin.barajas@state.co.us

**Summary of the basis and purpose for new rule or rule change.**

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. 1500 Char max*

On October 11, 2018, the Social Security Administration (SSA) announced a 2.8% Cost of Living Adjustment (COLA) for all Social Security and Supplemental Security Income recipients effective December 31, 2018. Colorado has a Maintenance of Effort requirement with the Social Security Administration that requires the State to "pass through" the COLA to recipients in order to spend at least the same amount in the current year as in the year prior. This means an increase in Adult Financial assistance. These rules propose an increase to the Supplemental Security Income (SSI) maximum payment by twenty one dollars (\$21) ( $\$750 \times 2.8\% = \$21$ ) to \$771 per month.

This rule will revise the Colorado Department of Human Services rules to increase the Old Age Pension (OAP) grant standard to \$809, the Aid to the Needy Disabled Colorado Supplement (AND-CS) grant standard to \$771, and the Adult Foster Care (AFC) grant standard to \$1403 in order to pass along the \$21 COLA increase. The components of the grant standard will be adjusted accordingly.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

- |                                     |   |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | to comply with state/federal law and/or       |
| <input checked="" type="checkbox"/> | to preserve public health, safety and welfare |

Justification for emergency:

20 CFR 416 et. seq. requires a Maintenance of Effort (MOE) between the State of Colorado and the Social Security Administration (SSA). This MOE requires that Colorado spend at least the same amount in the current year as they did in the previous year for specific categories of assistance, which includes OAP, AND-CS, and AFC recipients who receive SSI. Failure to pass along the COLA could impact the MOE agreement with the SSA. Failure to comply with the terms of the MOE could jeopardize Medicaid Federal Financial Participation (FFP) funds as the SSA could impose a sanction of no less than one full quarter FFP match (approximately \$300-350 million) for every month Colorado does not meet the MOE requirement.

This COLA increase will be completed in the Colorado Benefits Management System (CBMS). The aforementioned recipients live at 77% of the Federal poverty level. Adoption of these rules will allow these individuals to improve income levels by granting an increase for their daily living expenses, positively impacting the health, safety, and welfare of recipients.

**State Board Authority for Rule:**

Code	Description
26-1-107, C.R.S. (2018)	State Board to promulgate rules
26-1-109, C.R.S. (2018)	State department rules to coordinate with federal programs

**Title of Proposed Rule: Old Age Pension, Aid to the Needy Disabled Colorado Supplement, and Adult Foster Care Cost of Living Adjustment Increase for 2019**

**CDHS Tracking #:** 18-09-10-02

Office, Division, & Program: Rule Author: Erin Barajas  
Office of Economic Security,  
Employment & Benefits  
Division, Adult Financial  
Programs

Phone: 303-866-2467  
E-Mail:  
erin.barajas@state.co.us

26-1-111, C.R.S. (2018)	State department to promulgate rules for public assistance and welfare activities
-------------------------	---

**Program Authority for Rule:** *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
24-4-103, C.R.S. (2018)	Provides for emergency adoption of rules
26-2-111, C.R.S. (2018)	Collectively the Colorado Constitution, Article XXIV, Section 6; and 26-2-111 C.R.S. (2018); and 26-2-114, C.R.S. (2018) create the OAP program and grant the authority for adjustments to the OAP grant standard to the State Board
20 CFR 416 et seq.	Requires a maintenance of effort with SSA

Does the rule incorporate material by reference?

☐ Yes

☒ No

Does this rule repeat language found in statute?

☐ Yes

☒ No

If yes, please explain.

--

**Title of Proposed Rule: Old Age Pension, Aid to the Needy Disabled Colorado Supplement, and Adult Foster Care Cost of Living Adjustment Increase for 2019**

**CDHS Tracking #: 18-09-10-02**

Office, Division, & Program: Rule Author: Erin Barajas  
Office of Economic Security,  
Employment & Benefits  
Division, Adult Financial  
Programs

Phone: 303-866-2467

E-Mail:

erin.barajas@state.co.us

**REGULATORY ANALYSIS**

**1. List of groups impacted by this rule.**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

This rule change will impact all OAP, AND-CS, and AFC recipients. All OAP, AND-CS, and AFC recipients will receive a twenty one dollar (\$21) increase to their monthly grant. OAP recipients maximum grant will increase to \$809 ( $\$788 + \$21 = \$809$ ). AND-CS recipients maximum grant will increase to \$771 ( $\$750 + \$21 = \$771$ ). AFC recipients maximum grant will increase to \$1403 ( $\$1382 + \$21 = \$1403$ ).

This rule change will also impact OAP and AND-CS recipients that have an In-kind Support Maintenance (ISM) calculation because they are not paying their fair share of shelter and utility costs. The ISM is applied as in-kind income in the calculation of benefits. The new maximum ISM amount is \$277. ( $\$771 \times 33.33\% = \$257 + \$20 = \$277$ )

**2. Describe the qualitative and quantitative impact.**

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

The rule will result in an increase of \$21 to the OAP Grant Standard ( $\$788 + \$21 = \$809$ ) and will impact all OAP recipients, approximately 20,979 individuals. The rule will result in an increase of \$21 to the AND-CS Grant Standard ( $\$750 + \$21 = \$771$ ) and will impact all AND-CS recipients, approximately 626 individuals. The rule will result an increase of \$21 to the AFC Grant Standard ( $\$1382 + \$21 = \$1403$ ) and will impact all AFC recipients, currently zero individuals (this program has not been appropriated for FY 2019 due to no program participation).

This increase will ensure that the recipients do not go below 77% of the federal poverty level and will provide them with increased means to meet their basic living needs. This change may impact the food assistance benefits received by these clients. Approximately every three dollars (\$3) additional cash assistance could decrease the Food Assistance amount by one dollar (\$1). If an individual receives the full increase of twenty one dollars (\$21), his/her Food Assistance amount may decrease by seven dollars (\$7).

Long-term, increasing the grant standard will assist the State in meeting the SSA MOE. If the State fails to meet the provisions of the MOE, Medicaid Federal Financial Participation (FFP) funds will be placed in jeopardy.

The ISM adjustment only impacts those individuals who are not currently paying their fair share of shelter costs. Less than two percent (2%) of the combined OAP and AND-CS caseload has any type of in-kind income, and not all of those will have the ISM deduction. In simplified terms, we will assume that the client has no income or resources and, up to this point, would qualify for the full OAP or AND-CS grant. However, the county then looks to see if the client is paying his/her fair share for shelter, which includes utilities. The total shelter cost is then divided by the number of people living in the

**Title of Proposed Rule: Old Age Pension, Aid to the Needy Disabled Colorado Supplement, and Adult Foster Care Cost of Living Adjustment Increase for 2019**

**CDHS Tracking #: 18-09-10-02**

Office, Division, & Program: Rule Author: Erin Barajas  
Office of Economic Security,  
Employment & Benefits  
Division, Adult Financial  
Programs

Phone: 303-866-2467

E-Mail:  
erin.barajas@state.co.us

home to determine each person's fair share for shelter costs. If the client is not paying a fair share, the ISM deduction may apply. The amount the client is charged as income for unpaid shelter costs is never more than the ISM amount set in rule.

### **3. Fiscal Impact**

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just "no impact" answer should include "no impact because..."***

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

The cost to the State for the increase for non-SSI OAP recipients (approximately 10,249) will be \$21/recipient/month. This cost will be paid using 100% OAP cash funds. These increased expenditures by the State to non-SSI OAP recipients are estimated at \$2,582,748 (plus caseload growth) for FY 2019 and beyond.

The cost to the State for the increase to OAP recipients that are also receiving SSI (approximately 10,730) is estimated at \$2,703,960 (plus caseload growth) for FY 2019 and beyond.

The total estimated cost to the State through the OAP cash fund for SSI and non-SSI OAP recipients is estimated at \$5,286,708 (plus caseload growth) for FY 2019 and beyond.

The cost to the State for the increase for AND-CS recipients (approximately 626) will be \$21/recipient/month. These increased expenditures by the State to AND-CS recipients are estimated at \$157,752 (plus caseload growth) for FY 2019 and beyond.

The cost to the State will not increase as a result of changing the ISM calculation. The maximum ISM amount is tied directly to the SSI grant standard.

Maintenance hours will be utilized to make the required changes to CBMS.

County Fiscal Impact

No additional appropriation is required as it is included within existing appropriations for the programs impacted by this grant increase.

Federal Fiscal Impact

No impact because there are no federal funds utilized.

**Title of Proposed Rule: Old Age Pension, Aid to the Needy Disabled Colorado Supplement, and Adult Foster Care Cost of Living Adjustment Increase for 2019**

**CDHS Tracking #: 18-09-10-02**

Office, Division, & Program: Rule Author: Erin Barajas  
Office of Economic Security,  
Employment & Benefits  
Division, Adult Financial  
Programs

Phone: 303-866-2467

E-Mail:  
erin.barajas@state.co.us

Other Fiscal Impact (such as providers, local governments, etc.)

No impact because there are no other providers or local governments involved.

**4. Data Description**

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

The Social Security Administration issued a press release on October 11, 2018 announcing the 2.8% cost of living adjustment (COLA). This information can be found at <https://www.ssa.gov/news/press/releases/2018/#10-2018-1 2/2>

**5. Alternatives to this Rule-making**

*Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just "no alternative" answer should include "no alternative because..."*

Taking no action could adversely impact the health, safety, and welfare of OAP, AND-CS, and AFC recipients; and could cause the State to be unable to meet the MOE requirements as well with the Social Security Administration. Because of the penalties associated with not meeting the MOE, there are no other viable options

**Title of Proposed Rule: Old Age Pension, Aid to the Needy Disabled Colorado Supplement, and Adult Foster Care Cost of Living Adjustment Increase for 2019**

---

**CDHS Tracking #:** 18-09-10-02

---

Office, Division, & Program:  
Office of Economic Security,  
Employment & Benefits  
Division, Adult Financial  
Programs

Rule Author: Erin Barajas

Phone: 303-866-2467

---

E-Mail:

erin.barajas@state.co.us

---



**Title of Proposed Rule: Old Age Pension, Aid to the Needy Disabled Colorado Supplement, and Adult Foster Care Cost of Living Adjustment Increase for 2019**

**CDHS Tracking #:** 18-09-10-02

Office, Division, & Program:  
Office of Economic Security,  
Employment & Benefits  
Division, Adult Financial  
Programs

Rule Author: Erin Barajas

Phone: 303-866-2467

E-Mail:  
erin.barajas@state.co.us

**OVERVIEW OF PROPOSED RULE**

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.000	<i>Incorrect Statutory Reference</i>	<i>Section 26.5.103 C.R.S.</i>	<i>Section 26.5-101(3) C.R.S.</i>		
3.530 A. & B.	3. Update amounts of components to reflect the increased grant standard and ISM amount effective January 1, 2019.	<b>3.530 OLD AGE PENSION (OAP) PROGRAM</b> A. The total monthly OAP grant standard, as set by the State Board of Human Services, is \$788.00, effective January 1, 2018. B. Effective January 1, 2018, the maximum monthly In-Kind Support and Maintenance (ISM) deduction amount for shelter, including utilities, is \$270.00.	<b>3.530 OLD AGE PENSION (OAP) PROGRAM</b> A. The total monthly OAP grant standard, as set by the State Board of Human Services, is \$809.00, effective January 1, 2019. B. Effective January 1, 2019, the maximum monthly In-Kind Support and Maintenance (ISM) deduction amount for shelter, including utilities, is \$277.00.	To implement the \$21 COLA increase and adjust the ISM amount	NO
3.540 B. & E.	Update and correct the grant standard components effective January 1, 2019.	<b>3.540 AID TO THE NEEDY DISABLED (AND) PROGRAM</b> B. The total AND-CS grant standard is \$750.00, effective January 1, 2018. E. Effective January 1, 2018, the maximum ISM amount for shelter, including utilities, is \$270.00.	<b>3.540 AID TO THE NEEDY DISABLED (AND) PROGRAM</b> B. The total AND-CS grant standard is \$771.00, effective January 1, 2019. E. Effective January 1, 2019, the maximum ISM amount for shelter, including utilities, is \$277.00.	To implement the \$21 COLA increase and adjust the ISM amount	NO
3.580 B.	Update and correct the grant standard components effective January 1, 2019.	<b>3.580 ADULT FOSTER CARE (AFC)</b> <b>3.581 PURPOSE OF PROGRAM</b> B. Effective January 1, 2018, the maximum AFC grant standard is \$1,382.00, determined as follows: 1. Deduct the client's income, from the AFC grant standard; and, 2. Deduct the client's OAP or AND-CS grant and any Supplemental Security Income (SSI) benefits; and, 3. The remainder is the AFC benefit.	<b>3.580 ADULT FOSTER CARE (AFC)</b> <b>3.581 PURPOSE OF PROGRAM</b> B. Effective January 1, 2019, the maximum AFC grant standard is \$1403.00, determined as follows: 1. Deduct the client's income, from the AFC grant standard; and, 2. Deduct the client's OAP or AND-CS grant and any Supplemental Security Income (SSI) benefits; and, 3. The remainder is the AFC benefit.	To implement the \$21 COLA increase and adjust the ISM amount	NO

**Title of Proposed Rule: Old Age Pension, Aid to the Needy Disabled Colorado Supplement, and Adult Foster Care Cost of Living Adjustment Increase for 2019**

**CDHS Tracking #:** 18-09-10-02

Office, Division, & Program: Rule Author: Erin Barajas  
Office of Economic Security,  
Employment & Benefits  
Division, Adult Financial  
Programs

Phone: 303-866-2467

E-Mail:  
erin.barajas@state.co.us

**STAKEHOLDER COMMENT SUMMARY**

**Development**

*The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):*

None

**This Rule-Making Package**

*The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:*

County Human Services Directors Association; Colorado Commission on Aging; Colorado Legal Services; Disability Law Colorado; Colorado Senior Lobby; Single Entry Point agencies; Economic Security PAC & Sub-PAC; Colorado Gerontological Society; Area Agencies on Aging; Colorado Center on Law and Policy; Colorado Department of Human Services Food & Energy Assistance Division; and, Colorado Department of Health Care Policy and Financing

**Other State Agencies**

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

☐ Yes ☒ No

If yes, who was contacted and what was their input?

**Sub-PAC**

Have these rules been reviewed by the appropriate Sub-PAC Committee?

☒ Yes ☐ No

Name of Sub-PAC	Economic Security		
Date presented	10/04/18		
What issues were raised?	None		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	13	0	3
If not presented, explain why.			

**PAC**

Have these rules been approved by PAC?

☐ Yes ☒ No

Date presented	11/01/18		
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.			

**Title of Proposed Rule: Old Age Pension, Aid to the Needy Disabled Colorado Supplement, and Adult Foster Care Cost of Living Adjustment Increase for 2019**

**CDHS Tracking #:** 18-09-10-02

Office, Division, & Program:  
Office of Economic Security,  
Employment & Benefits  
Division, Adult Financial  
Programs

Rule Author: Erin Barajas

Phone: 303-866-2467

E-Mail:  
erin.barajas@state.co.us

**Other Comments**

Comments were received from stakeholders on the proposed rules:

☐ Yes ☒ No

*If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.*

**Title of Proposed Rule: Old Age Pension, Aid to the Needy Disabled Colorado Supplement, and Adult Foster Care Cost of Living Adjustment Increase for 2019**

**CDHS Tracking #: 18-09-10-02**

Office, Division, & Program: Rule Author: Erin Barajas  
Office of Economic Security,  
Employment & Benefits  
Division, Adult Financial  
Programs

Phone: 303-866-2467

E-Mail:  
erin.barajas@state.co.us

## 9 CCR 2503-5

=====

### **3.530 OLD AGE PENSION (OAP) PROGRAM**

The Old Age Pension (OAP) program provides financial assistance and may provide health care benefits for low-income Colorado residents who are sixty (60) years of age or older who meet basic eligibility requirements.

A. The total monthly OAP grant standard, as set by the State Board of Human Services, is ~~\$788.00~~ \$809.00, effective January 1, 20189.

B. Effective January 1, 20189, the maximum monthly In-Kind Support and Maintenance (ISM) deduction amount for shelter, including utilities, is ~~\$270.00~~ 277.00.

\*\*\*\*\*

### **3.540 AID TO THE NEEDY DISABLED (AND) PROGRAM**

The Aid to the Needy Disabled State Only (AND-SO) program provides interim assistance to clients age eighteen (18) through fifty-nine (59) years of age (unless diagnosed with blindness, then age zero (0) through 59 years of age); who are disabled or blind but have not been approved for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). The AND-Colorado Supplement (AND-CS) program provides a supplemental payment for client's age zero (0) to 59 who are receiving SSI due to a disability or blindness, but are not receiving the full SSI grant standard.

A. The total AND-SO grant standard is \$217.00, effective September 1, 2018.

B. The total AND-CS grant standard is ~~\$750.00~~771.00, effective January 1, 20189.

C. The grant standards for AND-SO and AND-CS shall be adjusted as needed to remain within available appropriations. Appeals shall not be allowed for grant standard adjustments necessary to stay within available appropriations.

D. In addition to the regular monthly AND-CS grant payments, supplemental payments necessary to comply with the federal Maintenance of Effort (MOE) requirements may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not be allowed for MOE payment adjustments.

E. Effective January 1, 20189, the maximum ISM amount for shelter, including utilities, is ~~\$270.00~~277.00.

\*\*\*\*\*

### **3.580 ADULT FOSTER CARE (AFC)**

#### **3.581 PURPOSE OF PROGRAM**

**Title of Proposed Rule: Old Age Pension, Aid to the Needy Disabled Colorado Supplement, and Adult Foster Care Cost of Living Adjustment Increase for 2019**

**CDHS Tracking #: 18-09-10-02**

Office, Division, & Program: Rule Author: Erin Barajas  
Office of Economic Security,  
Employment & Benefits  
Division, Adult Financial  
Programs

Phone: 303-866-2467

E-Mail:  
erin.barajas@state.co.us

A. The AFC program provides twenty-four (24) hour care and supervision for frail elderly or physically or emotionally disabled adults, age eighteen (18) or older, who do not require twentyfour (24) hour medical care but who cannot return to their home and need twenty-four (24) hour non-medical supervision.

B. Effective January 1, 2018<sup>9</sup>, the maximum AFC grant standard is \$1,382.00<sup>14</sup>03.00, determined as follows:

1. Deduct the client's income, from the AFC grant standard; and,
2. Deduct the client's OAP or AND-CS grant and any Supplemental Security Income (SSI) benefits; and,
3. The remainder is the AFC benefit.

C. The AFC maximum grant standard shall be adjusted to stay within available appropriations. Appeals shall not be granted for these adjustments.

D. The AFC grant is not taxable income to the client.

E. In addition to the regular monthly AFC grant payments, supplemental payments necessary to comply with the federal Maintenance of Effort (MOE) requirements may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not be allowed for MOE payment adjustments.

\*\*\*\*\*

=====

# Notice of Proposed Rulemaking

**Tracking number**

2018-00605

**Department**

500,1008,2500 - Department of Human Services

**Agency**

2503 - Income Maintenance (Volume 3)

**CCR number**

9 CCR 2503-9

**Rule title**

COLORADO CHILD CARE ASSISTANCE PROGRAM

## Rulemaking Hearing

**Date**

12/07/2018

**Time**

08:30 AM

**Location**

1575 Sherman Street

**Subjects and issues involved**

Annually, the Department updates the federal poverty levels and the state median income levels in CHATS (the automated system used by counties to administer CCCAP) to align with each federal fiscal year. These guidelines are used to determine eligibility for families applying to the CCCAP program.

It has come to our attention that the family size is incorrect for each of the income limits posted in rule. We cannot address this error in a memo as the state must adhere to the Administrative Procedure Act, § 24-4-103, which requires the state to address in rule any general standard that is applied to the public (such as income eligibility for child care assistance).

**Statutory authority**

26-1-107, C.R.S. (2015)  
26-1-109, C.R.S. (2015)  
26-1-111, C.R.S. (2015)  
Section 26-1-107, C.R.S.  
Section 26-2-805, C.R.S.  
CCDBG 658E(c)(5); 45 CFR 98.42

## Contact information

**Name**

Erin Mewhinney

**Title**

Rule Author

**Telephone**

303-866-5946

**Email**

erin.mewhinney@state.co.us

**Title of Proposed Rule:** Colorado Child Care Assistance Program Rules

**CDHS Tracking #:** 18-10-26-01

**CCR #:** 9 CCR 2503-9

Office, Division, & Program:  
Office of Early Childhood,  
Division of Early Care &  
Learning, Colorado Child Care  
Assistance Program

Rule Author: Erin Mewhinney

Phone: 303-866-5946

E-Mail: [erin.mewhinney@state.co.us](mailto:erin.mewhinney@state.co.us)

## RULEMAKING PACKET

**Type of Rule:** *(complete a and b, below)*

a. ☒ Board ☐ Executive Director

b. ☒ Regular ☐ Emergency

**This package is submitted to State Board Administration as:** *(check all that apply)*

☐ AG Initial  
Review

☐ Initial Board  
Reading

☒ AG 2<sup>nd</sup> Review

☒ Second Board Reading  
/ Adoption

**This package contains the following types of revisions to the rule:** *(check all that apply)*

☒ Amended  
☐ New  
☐ Repealed  
☒ Reviewed

What month is being requested for this rule to first go before the State Board?	November
---	----------

What date is being requested for this rule to be effective?	Immediately
Is this date legislatively required?	yes

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

**Office Director Approval:**  Date: 10-26-2018

### REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Comments:

Estimated Dates:	1st Board _____	2nd Board _____	Effective Date _____
---------------------	--------------------	--------------------	-------------------------

**Title of Proposed Rule:** Colorado Child Care Assistance Program Rules

**CDHS Tracking #:** 18-10-26-01

**CCR #:** 9 CCR 2503-9

Office, Division, & Program:  
Office of Early Childhood,  
Division of Early Care &  
Learning, Colorado Child Care  
Assistance Program

Rule Author: Erin Mewhinney

Phone: 303-866-5946

E-Mail: [erin.mewhinney@state.co.us](mailto:erin.mewhinney@state.co.us)

### **STATEMENT OF BASIS AND PURPOSE**

#### **Summary of the basis and purpose for new rule or rule change.**

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. **1500 Char max***

Annually, the Department updates the federal poverty levels and the state median income levels in CHATS (the automated system used by counties to administer CCCAP) to align with each federal fiscal year. These guidelines are used to determine eligibility for families applying to the CCCAP program.

It has come to our attention that the family size is incorrect for each of the income limits posted in rule. We cannot address this error in a memo as the state must adhere to the Administrative Procedure Act, § 24-4-103, which requires the state to address in rule any general standard that is applied to the public (such as income eligibility for child care assistance).

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

- ☒ to comply with state/federal law and/or  
☐ to preserve public health, safety and welfare

Justification for emergency:

Typo in the family size posted with the federal poverty guidelines table in the CCCAP rule package that was adopted on 8/3/2018 and put into effect 9/30/2018. This table must be corrected in order to comply with state statute.

#### **State Board Authority for Rule:**

Code	Description
26-1-107, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities.

**Program Authority for Rule:** *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
Section 26-1-107, C.R.S.	State Board authority
Section 26-2-805, C.R.S.	CCCAP income eligibility levels
CCDBG 658E(c)(5); 45 CFR 98.42	Child Care Development Block Grant Act (2014)

Does the rule incorporate material by reference?

☐ Yes

☒ No

Does this rule repeat language found in statute?

☐ Yes

☒ No



**Title of Proposed Rule:** Colorado Child Care Assistance Program Rules

**CDHS Tracking #:** 18-10-26-01

**CCR #:** 9 CCR 2503-9

Office, Division, & Program:

Office of Early Childhood,

Division of Early Care &

Learning, Colorado Child Care

Assistance Program

Rule Author: Erin Mewhinney

Phone: 303-866-5946

E-Mail:erin.mewhinney@state.co.us

If yes, please explain.

**Title of Proposed Rule:** Colorado Child Care Assistance Program Rules

**CDHS Tracking #:** 18-10-26-01

**CCR #:** 9 CCR 2503-9

Office, Division, & Program:  
Office of Early Childhood,  
Division of Early Care &  
Learning, Colorado Child Care  
Assistance Program

Rule Author: Erin Mewhinney

Phone: 303-866-5946

E-Mail:erin.mewhinney@state.co.us

## **REGULATORY ANALYSIS**

### **1. List of groups impacted by this rule.**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

Counties who administer Colorado Child Care Assistance Program (CCCAP) will benefit from the rule, CHATS and Departmental policy being aligned.

Households receiving CCCAP will have clear guidance in both rule and policy regarding income eligibility levels.

### **2. Describe the qualitative and quantitative impact.**

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

Counties are already operating under these income guidelines, as proposed in this rule package. The Child Care Automated System (CHATS) has the correct family income limits according to the . However, without accurate rule in place, families may not know they are eligible. In addition, this may cause confusion among counties on which income guidelines they should adhere to when determining eligibility.

### **3. Fiscal Impact**

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just "no impact" answer should include "no impact because...."***

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

No fiscal impact to the state as the changes in CHATS has already occurred and is accurate.

County Fiscal Impact

No direct fiscal impact to counties as the CHATS system is accurately calculating income limits, but there is a possibility for questioned costs if the error in rule is not fixed.

Federal Fiscal Impact

No federal fiscal impact.

Other Fiscal Impact (such as providers, local governments, etc.)

**Title of Proposed Rule:** Colorado Child Care Assistance Program Rules

**CDHS Tracking #:** 18-10-26-01

**CCR #:** 9 CCR 2503-9

Office, Division, & Program:  
Office of Early Childhood,  
Division of Early Care &  
Learning, Colorado Child Care  
Assistance Program

Rule Author: Erin Mewhinney

Phone: 303-866-5946

E-Mail:erin.mewhinney@state.co.us

#### **4. Data Description**

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

Federal Poverty Guidelines published January 18, 2018. LIHEAP-IM-2018-03 – memo on FFY19 state median income levels.

#### **5. Alternatives to this Rule-making**

*Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just “no alternative” answer should include “no alternative because...”*

There are no alternatives to this rule making because APA requires that these standards are promulgated in rule.

**Title of Proposed Rule:** Colorado Child Care Assistance Program Rules

**CDHS Tracking #:** 18-10-26-01

**CCR #:** 9 CCR 2503-9

Office, Division, & Program:  
Office of Early Childhood,  
Division of Early Care &  
Learning, Colorado Child Care  
Assistance Program

Rule Author: Erin Mewhinney

Phone: 303-866-5946

E-Mail:erin.mewhinney@state.co.us

**OVERVIEW OF PROPOSED RULE**

Compare and/or contrast the content of the current regulation and the proposed change.

Page #	New Rule #	Current Rule #	Status (i.e., new, clarification, technical, repeal)	Changes/Description	Public Comment Y/N
16-17		3.905.1 (H)(2)	New	Revised family household size to reflect monthly gross income levels (as recommended by the Federal Poverty Guidelines, published January 13, 2018.)	n/a

**Title of Proposed Rule:** Colorado Child Care Assistance Program Rules

**CDHS Tracking #:** 18-10-26-01

**CCR #:** 9 CCR 2503-9

Office, Division, & Program:  
Office of Early Childhood,  
Division of Early Care &  
Learning, Colorado Child Care  
Assistance Program

Rule Author: Erin Mewhinney

Phone: 303-866-5946

E-Mail:erin.mewhinney@state.co.us

### **STAKEHOLDER COMMENT SUMMARY**

#### **Development**

*The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):*

Emergency rule package based on 2017 federal poverty guidelines.

#### **This Rule-Making Package**

*The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:*

Office of Early Childhood (OEC) PAC & Sub-PAC were informed of the emergency rule making strategy at the November meeting.

#### **Other State Agencies**

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

☐ Yes ☒ No

If yes, who was contacted and what was their input?

#### **Sub-PAC**

Have these rules been reviewed by the appropriate Sub-PAC Committee?

☐ Yes ☒ No

Name of Sub-PAC	CDHS Early Childhood Sub-PAC		
Date presented			
What issues were raised?	None		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.			

#### **PAC**

Have these rules been approved by PAC?

☐ Yes ☒ No

Date presented			
What issues were raised?	None		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.			

#### **Other Comments**

Emergency rule package was not released for public comment.

**Title of Proposed Rule:** Colorado Child Care Assistance Program Rules

**CDHS Tracking #:** 18-10-26-01

**CCR #:** 9 CCR 2503-9

Office, Division, & Program:

Office of Early Childhood,

Division of Early Care &

Learning, Colorado Child Care

Assistance Program

Rule Author: Erin Mewhinney

Phone: 303-866-5946

E-Mail:erin.mewhinney@state.co.us

## DEPARTMENT OF HUMAN SERVICES

### Income Maintenance (Volume 3)

#### COLORADO CHILD CARE ASSISTANCE PROGRAM

##### 9 CCR 2503-9

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

---

### 3.900 COLORADO CHILD CARE ASSISTANCE PROGRAM (CCCAP)

#### 3.905.1

##### H. Low-Income Eligibility Guidelines

2. Effective October 1, 2018, monthly gross income levels, for one-hundred percent (100%) and one-hundred sixty-five percent (165%) of the federal poverty level, as well as eighty-five percent (85%) of state median income for the corresponding household size are as follows:

Family Size	100% Federal Poverty Guideline (FPG)	165% Federal Poverty Guideline (State Minimum Income Limit)	85% State Median Income (SMI) (State and Federal Maximum Income Limit)
<b>12</b>	\$1,011.67	\$1,669.25	<b>\$3,360.16</b>
<b>23</b>	\$1,371.67	\$2,263.25	\$4,394.05
<b>34</b>	\$1,731.67	\$2,857.25	\$5,427.95
<b>45</b>	\$2,091.67	\$3,451.25	\$6,461.84
<b>56</b>	\$2,451.67	\$4,045.25	\$7,495.74
<b>67</b>	\$2,811.67	\$4,639.25	\$8,529.63
<b>78</b>	\$3,171.67	\$5,233.25	\$8,723.49
<b>89</b>	\$3,531.67	\$5,827.25	\$8,917.34
Each Additional person	\$360.00	\$594.00	\$193.86

# Notice of Proposed Rulemaking

**Tracking number**

2018-00607

**Department**

2505,1305 - Department of Health Care Policy and Financing

**Agency**

2505 - Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

**CCR number**

10 CCR 2505-10

**Rule title**

MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE, AND RULE HISTORY

**Rulemaking Hearing****Date**

12/14/2018

**Time**

09:00 AM

**Location**

303 East 17th Avenue, 11th Floor, Denver, CO 80203

**Subjects and issues involved**

See attached

**Statutory authority**

25.5.1-301 through 303 (CRS 2017)

**Contact information****Name**

Chris Sykes

**Title**

Medical Services Board Coordinator

**Telephone**

3038664416

**Email**

chris.sykes@state.co.us





## COLORADO

Department of Health Care  
Policy & Financing

Medical Services Board

### NOTICE OF PROPOSED RULES

The Medical Services Board of the Colorado Department of Health Care Policy and Financing will hold a public meeting on Friday, December 14, 2018, beginning at 9:00 a.m., in the eleventh floor conference room at 303 East 17th Avenue, Denver, CO 80203. Reasonable accommodations will be provided upon request for persons with disabilities. Please notify the Board Coordinator at 303-866-4416 or [chris.sykes@state.co.us](mailto:chris.sykes@state.co.us) or the 504/ADA Coordinator [hcpf504ada@state.co.us](mailto:hcpf504ada@state.co.us) at least one week prior to the meeting.

A copy of the full text of these proposed rule changes is available for review from the Medical Services Board Office, 1570 Grant Street, Denver, Colorado 80203, (303) 866-4416, fax (303) 866-4411. Written comments may be submitted to the Medical Services Board Office on or before close of business the Wednesday prior to the meeting. Additionally, the full text of all proposed changes will be available approximately one week prior to the meeting on the Department's website at [www.colorado.gov/hcpf/medical-services-board](http://www.colorado.gov/hcpf/medical-services-board).

This notice is submitted pursuant to § 24-4-103(3)(a) and (11)(a), C.R.S.

#### **MSB 18-04-09-A, Revision to the Medical Assistance Rule concerning Psychiatric Residential Treatment Facilities and Residential Child Care Facilities, Section 8.765**

Medical Assistance. Psychiatric Residential Treatment Facilities (PRTF) and Residential Child Care Facilities (RCCF). PRTF and RCCF rule section at 10 C.C.R. 2505-10, Section 8.765, is being updated. Changes include: updating agency names; updating Diagnostic Statistical Manual edition; alignment with recent State Plan amendments; replacing Colorado Client Assessment Record (CCAR) assessment tool with Child and Adolescent Needs and Strengths (CANS) and Treatment Outcome Package (TOP) assessment tools; replace restraint and seclusion language with reference to federal regulatory requirements; requires RCCFs be designated and licensed by the Colorado Department of Human Services; and, specified RCCFs may enroll as a separate provider type to render medically necessary services not included in the RCCF benefit.

The authority for this rule is contained in 42 USC §§ 1396d(a)(16), (h)(1) (2018); 42 CFR §§ 440.160 (2010), 441.151-.184 (2016), 483.350-.376 (2018); 25.5-1-301 through 25.5-1-303, C.R.S. (2017) and 25.5-4-103(19.5), 25.5-5-306 C.R.S. (2017).

#### **MSB 18-09-07-A, Revision to the Medical Assistance Rule concerning FDA Approval of Stiripentol, Section 8.400.C.5**

Medical Assistance. Stiripentol, a drug used to treat an epileptic condition known as Dravet Syndrome, is now FDA approved. Due to the recent FDA approval of Stiripentol, its reference under 10 C.C.R. 2505-10, Section 8.800.4.C.5.a, as a non-FDA approved drug will be deleted. The Department currently covers Stiripentol and will continue to cover Stiripentol. This rule change is simply a technical clean-up to remove its designation as a non-FDA approved drug

The authority for this rule is contained in 42 U.S.C. § 1396d(a)(12); 42 CFR § 440.120, 42 CFR § 447.50; 25.5-1-301 through 25.5-1-303, C.R.S. (2017) and 25.5-5-201(1)(a), C.R.S. (2017).

**MSB 18-09-12-A, Revision to the Medical Assistance Rule concerning the Dental Health Care Program for Low-Income Seniors, Section 8.960**

Medical Assistance. Revision to the Special Financing Division Colorado Dental Health Care Program for Low-Income Seniors. MSB 18-09-12-A amends Appendix A to correspond with procedure codes definitions listed in the CDT 2019 Dental Procedure Codes book distributed by the American Dental Association.

The authority for this rule is contained in 25.5-3-401 through 25.5-3-406 and 25.5-1-301 through 25.5-1-303, C.R.S. (2017).

# Notice of Proposed Rulemaking

**Tracking number**

2018-00572

**Department**

500,1008,2500 - Department of Human Services

**Agency**

2506 - Food Assistance Program (Volume 4B)

**CCR number**

10 CCR 2506-1

**Rule title**

RULE MANUAL VOLUME 4B, FOOD ASSISTANCE

**Rulemaking Hearing****Date**

12/07/2018

**Time**

08:30 AM

**Location**

1575 Sherman Street

**Subjects and issues involved**

These changes are being proposed to simplify the Food Assistance rules by removing duplicative sections, redundancies and to meet one of the Governors Wildly Important Goals.

**Statutory authority**

26-1-107, C.R.S. (2016)

26-1-109, C.R.S. (2016)

26-1-111, C.R.S. (2016)

**Contact information****Name**

Teri Chasten

**Title**

Rule Author

**Telephone**

303-866-5813

**Email**

teri.chasten@state.co.us

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

## RULEMAKING PACKET

**This package is submitted to State Board Administration as:** *(check all that apply)*

☐ AG Initial Review     
 ☒ Initial Board Reading     
 ☐ AG 2<sup>nd</sup> Review     
 ☐ Second Board Reading / Adoption

This package contains the following types of revisions to the rule: *(number of sections with the following edits)*

119 Amended  
       New  
7 Repealed  
       Reviewed

What month is being requested for this rule to first go before the State Board?  
 December 2018

What date is being requested for this rule to be effective? March 2019  
 Is this date legislatively required? No.

Is this rule change based on legislation? No.                      If so, bill number:

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

**Office Director Approval:** \_\_\_\_\_ **Date:** \_\_\_\_\_

### REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Comments:

Estimated Dates:      1st Board \_\_\_\_\_      2nd Board \_\_\_\_\_      Effective Date \_\_\_\_\_

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

### STATEMENT OF BASIS AND PURPOSE

#### **Summary of the basis and purpose for new rule or rule change.**

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. **Firm 1500 character maximum, please count before submitting.***

These changes are being proposed to simplify the Food Assistance rules by removing duplicative sections, redundancies and to meet one of the Governor's Wildly Important Goals.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

- ☐ to comply with state/federal law and/or  
☐ to preserve public health, safety and welfare

Justification for emergency:

#### **State Board Authority for Rule:**

Code	Description
26-1-107, C.R.S. (2016)	State Board to promulgate rules
26-1-109, C.R.S. (2016)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2016)	State department to promulgate rules for public assistance and welfare activities.

**Program Authority for Rule:** *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority. **This is mandatory, do not leave blank.***

Code	Description
26-2-301 (2017), C.R.S.	Designates the Colorado Department of Human Services as the responsible agency to administer the Food Assistance Program in the State of Colorado.
26-2-302 (2017), C.R.S.	Prohibits any interference that would prevent the Colorado Department of Human Services from complying with federal mandates prescribed under the federal "Food Stamp Act" as amended.
Agricultural Act of 2014 (Public Law 113-79)	Federal program authority

Does the rule incorporate material by reference?

☐ Yes ☒ No

Does this rule repeat language found in statute?

☐ Yes ☒ No

If yes, please explain.

#### **Type of Rule:** *(complete a and b, below)*

- a. ☒ Board      or      ☐ Executive Director  
 b. ☒ Regular      or      ☐ Emergency

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

## **REGULATORY ANALYSIS**

### **1. List of groups impacted by this rule.**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

These updates will simplify language and remove redundant references which will assist SNAP applicants, recipients, and administrators of the program better understand the regulatory requirements of the program. There are no anticipated adverse impacts for these changes.

### **2. Describe the qualitative and quantitative impact.**

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

Short term and long term impacts of this rule change are anticipated to improve quality assurance by better clarifying existing policies and to improve the program experience for SNAP applicants and recipients.

### **3. Fiscal Impact**

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just "no impact" answer should include "no impact because...."***

State Fiscal Impact *(Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)*

There is no anticipated state fiscal impact as these regulations currently exist and are merely being clarified.

County Fiscal Impact

There is no anticipated county fiscal impact as these regulations currently exist and are merely being clarified.

Federal Fiscal Impact

There is no anticipated federal fiscal impact as these regulations currently exist and are merely being clarified.

Other Fiscal Impact *(such as providers, local governments, etc.)*

### **4. Data Description**

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

Data was not a factor in the revisions to these regulations.

### **5. Alternatives to this Rule-making**

*Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. **Answer should NEVER be just "no alternative" answer should include "no alternative because..."***

<b>Title of Proposed Rule:</b>	Technical Cleanup of the Food Assistance Program		
<b>CDHS Tracking #:</b>	18-09-28-02		
<b>CCR #:</b>	10 CCR 2506-1		
Office, Division, & Program:	OES, FEAD, Food Assistance	Phone:	303-866-5813
Rule Author:	Teri Chasten	E-Mail:	Teri.chasten@state.co.us

As these changes are codified into federal regulations and Colorado is responsible for administering the federal Supplemental Nutrition Assistance Program, State rules must be updated to align with federal expectations.

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

### **OVERVIEW OF PROPOSED RULE**

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
4.070	Removed unnecessary regulation cross-reference.	<p><b>Compliant Requirements</b> The local office shall, as part of its overall outreach responsibility, publicize the state's complaint system.</p> <p>In addition, the local office shall advise any household wishing to file a complaint of the complaint procedure and offer assistance in filing a complaint, if appropriate.</p> <p>The State Department shall ensure that information is made available to potential participants, applicants, participants, or other interested persons concerning the complaint system, and the procedure for filing a complaint at the state or county level. Such information shall be made available to potential participants, applicants, and other interested parties through written materials and posters which shall be prominently displayed in all certification and issuance offices.</p> <p>For complaints of discrimination, refer to 4.070.2 through 4.070.22.</p> <p>The local office shall make every effort to resolve all complaints, excluding complaints of discrimination, brought to their attention at the local level. However, all complainants shall be informed they have the right to contact the State Department if they are not satisfied with the action taken at the local level.</p>	<p><b>COMPLIANT REQUIREMENTS</b> The local office shall advise any household wishing to file a complaint of the complaint procedure and offer assistance in filing a complaint, if appropriate.</p> <p>The State Department shall ensure that information is made available to potential participants, applicants, participants, or other interested persons concerning the complaint system, and the procedure for filing a complaint at the state or county level. Such information shall be made available to potential participants, applicants, and other interested parties through written materials and posters which shall be prominently displayed in all certification and issuance offices.</p> <p>The local office shall make every effort to resolve all complaints, excluding complaints of discrimination, brought to their attention at the local level. However, all complainants shall be informed they have the right to contact the State Department if they are not satisfied with the action taken at the local level.</p>	<p>Section updated to reflect Heading status through use of capitalization.</p> <p>Clarified opening sentence by removing redundant language.</p> <p>The citation to another section of the Food Assistance regulation is not necessary to understand the context of this citation.</p>	
4.070.2	Updated language.	Food Assistance benefits shall be extended to all eligible households without regard to age, race, color, sex, disability, religious creed, national origin or political beliefs. Local offices shall ensure that the nondiscrimination poster provided by FNS is prominently displayed. Posters may be obtained through the State Department.	State and local agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, disability, religious creed, national origin, political beliefs,	Updated the required USDA Non-Discrimination Language.	



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		The local office shall explain the complaint procedures, as outlined in 4.070.21 "Discrimination Complaint Procedure," to each person expressing an interest in filing a discrimination complaint and shall advise the individual of the right to file a complaint under this procedure. Such information shall be made available within ten (10) calendar days from the date of request.	or reprisal or retaliation for prior civil rights activity in any program or activity funded by the USDA. Discrimination in any aspect of program administration is prohibited. Local offices shall ensure that the nondiscrimination poster provided by FNS is prominently displayed. Posters may be obtained through the State Department.  The local office shall explain the complaint procedures, as outlined in 4.070.21 "Discrimination Complaint Procedure," to each person expressing an interest in filing a discrimination complaint and shall advise the individual of the right to file a complaint under this procedure. Such information shall be made available within ten (10) calendar days from the date of request.		
4.070.21	Corrected reference and updated language.	<p><b>Discrimination Complaint Procedure</b></p> <p>A. Individuals who believe they have been subject to discrimination may file a written complaint with the USDA, FNS national office, the local office, and/or the State Department. All complaints of alleged discrimination shall be made in writing and shall be submitted to the FNS national office.</p> <p>If allegations of discrimination are made verbally, and if the complainant is unable or unwilling to put the allegations in writing, the State or county employee to whom the allegation is made shall document the complaint in writing. The person accepting the complaint shall make every effort to secure the information specified in Subsection C, below.</p> <p>B. The complainant shall be advised that a complaint may be submitted to the State Department, FNS or both, and that a complaint shall not be investigated unless information specified in items C, 1, through C, 6, below, is provided. In addition, the complainant shall be advised that a complaint must be filed no later than one hundred eighty (180) calendar days from the date of the alleged discrimination. The local office shall date</p>	<p><b>Discrimination Complaint Procedure</b></p> <p>A. Individuals who believe they have been subject to discrimination may file a written complaint with the USDA, FNS national office, the local office, and/or the State Department. All complaints of alleged discrimination shall be made in writing and shall be submitted to the FNS national office.</p> <p>If allegations of discrimination are made verbally, and if the complainant is unable or unwilling to put the allegations in writing, the State or county employee to whom the allegation is made shall document the complaint in writing. The person accepting the complaint shall make every effort to secure the information specified in Subsection C, below.</p> <p>B. The complainant shall be advised that a complaint may be submitted to the State Department, FNS or both, and that a complaint shall not be investigated unless information specified in items C,2 through C,4, below, is provided. In addition, the complainant shall be advised that a complaint must be filed no later than one hundred eighty (180) calendar days from the date of the alleged discrimination. The local office shall date stamp or</p>	Corrected section 'B' compliant items required to be completed on form and updated the address for discrimination complaints.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>stamp or otherwise note the date the complaint is received by the office.</p> <ol style="list-style-type: none"> <li>1. Complaints directed to the FNS national office shall be addressed to: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410.</li> <li>2. Complaints directed to the State Department shall be addressed to: Colorado Department of Human Services, Food Assistance Program, 1575 Sherman St., Denver, CO 80203.</li> </ol> <p>B. The complaint shall include the following information to facilitate investigations:</p> <ol style="list-style-type: none"> <li>1. The name, address and telephone number or other means of contacting the person alleging discrimination;</li> <li>2. The location and name of the office which is accused of discriminatory practices;</li> <li>3. The nature of the incident or action, or the aspect of Program administration that led the person to allege discrimination;</li> <li>4. The reason for the alleged discrimination (age, race, color, sex, handicap, religious creed, national origin, or political beliefs);</li> <li>5. The name(s) and title(s), if appropriate, of person(s) who may have knowledge of the alleged discriminatory act; and</li> <li>6. The date(s) on which the alleged discriminatory action(s) occurred.</li> </ol>	<p>otherwise note the date the complaint is received by the office.</p> <ol style="list-style-type: none"> <li>1. U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; Fax: (202) 690-7442; Email: program.intake@usda.gov.</li> <li>2. Complaints directed to the State Department shall be addressed to: Colorado Department of Human Services, Food Assistance Program, 1575 Sherman St., Denver, CO 80203.</li> </ol> <p>B. The complaint shall include the following information to facilitate investigations:</p> <ol style="list-style-type: none"> <li>1. The name, address and telephone number or other means of contacting the person alleging discrimination;</li> <li>2. The location and name of the office which is accused of discriminatory practices;</li> <li>3. The nature of the incident or action, or the aspect of Program administration that led the person to allege discrimination;</li> <li>4. The reason for the alleged discrimination</li> <li>5. The name(s) and title(s), if appropriate, of person(s) who may have knowledge of the alleged discriminatory act; and</li> <li>6. The date(s) on which the alleged discriminatory action(s) occurred.</li> </ol>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
4.100	Corrected and updated language.	<p>FOOD ASSISTANCE PROGRAM DEFINITIONS</p> <p>“ABAWD”, see “Able-bodied adult without dependent.”</p> <p>“ABAWD County” means a county with an Employment First Program that requires ABAWDs to meet a mandatory monthly ABAWD work requirement of working or participating in an acceptable work activity eighty (80) hours per month or completing all assigned workfare hours monthly.</p> <p>“Able-bodied adult without dependent” means an individual between the ages of eighteen (18) and fifty (50) without a physical or mental disability, who is not pregnant, and who lives in a food assistance household with no one under the age of eighteen (18).</p> <p>“ACES”, see “Automated Child Support Enforcement System.”</p> <p>“Administrative disqualification hearing (ADH)” means a disqualification hearing against an individual accused of wrongfully obtaining or attempting to obtain assistance.</p> <p>“Administrative law judge” means the person that presides over fair hearings and administrative disqualification hearings at the state level.</p> <p>“Adverse action” means any action taken by a local office that causes a household’s benefits to be reduced or terminated.</p> <p>“Adverse action period” means the period of time that elapses prior to the adverse action becoming effective during the certification period.</p> <p>“Agency error claim” means that a debt has been</p>	<p>FOOD ASSISTANCE PROGRAM DEFINITIONS</p> <p>“ABAWD County” means a county with an Employment First Program that requires ABAWDs to meet a mandatory monthly ABAWD work requirement of working or participating in an acceptable work activity eighty (80) hours per month or completing all assigned workfare hours monthly.</p> <p>“Able-bodied adult without dependent (ABAWD)” means an individual between the ages of eighteen (18) and fifty (50) without a physical or mental disability, who is not pregnant, and who lives in a food assistance household with no one under the age of eighteen (18).</p> <p>“Administrative disqualification hearing (ADH)” means a disqualification hearing against an individual accused of wrongfully obtaining or attempting to obtain assistance.</p> <p>“Administrative law judge (ALJ)” means the person that presides over fair hearings and administrative disqualification hearings at the state level.</p> <p>“Adverse action” means any action taken by a local office that causes a household’s benefits to be reduced or terminated.</p> <p>“Adverse action period” means the period of time that elapses prior to the adverse action becoming effective during the certification period.</p> <p>“Agency error claim” means that a debt has been established for the household to repay due to an overpayment of benefits that was issued to the household resulting from an error made by the local office.</p> <p>“Allotment” means the total amount of Food Assistance</p>	Definitions and acronyms were listed separately, a number of definitions were updated	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>established for the household to repay due to an overpayment of benefits that was issued to the household resulting from an error made by the local office.</p> <p>“Allotment” means the total amount of Food Assistance benefits a household is authorized to receive in a particular month.</p> <p>“ALJ”, see “Administrative Law Judge.”</p> <p>“Appeal” means a request made by a household to have a decision about its case reviewed by an impartial third party to determine whether the decision was correct.</p> <p>“Application filing date” means the date an application for assistance is received by the county office.</p> <p>“Application” means a request on a state-approved form for benefits, which can include the electronic state-prescribed form.”</p> <p>“Application for redetermination” means an application submitted prior to the last month of the certification period to determine a household’s continued eligibility for the next certification period.</p> <p>“Application process” means the required process a household must complete for purposes of determining eligibility for benefits.</p> <p>“Authorized representative” means an individual who has been designated in writing by a responsible member of the household to act on behalf of or assist the household with the application process, obtaining benefits, and/or in using benefits at authorized retailers.</p>	<p>benefits a household is authorized to receive in a particular month.</p> <p>“Appeal” means a request made by a household to have a decision about its case reviewed by an impartial third party to determine whether the decision was correct.</p> <p>“Application filing date” means the date an application for assistance is received by the county office.</p> <p>“Application” means a request on a state-approved form for benefits, which can include the electronic state-prescribed form.”</p> <p>“Application for redetermination/recertification (RRR)” means an application submitted prior to the last month of the certification period to determine a household’s continued eligibility for the next certification period.</p> <p>“Application process” means the required process a household must complete for purposes of determining eligibility for benefits.</p> <p>“Authorized representative” means an individual who has been designated in writing by a responsible member of the household to act on behalf of or assist the household with the application process, obtaining benefits, and/or in using benefits at authorized retailers.</p> <p>“Automated Child Support Enforcement System (ACSES)” means the automated computer system used by Child Support Services to record child support payments.</p> <p>“Basic Categorical Eligibility (BCE)” means the status granted to any household that is not eligible for Expanded Categorical Eligibility and contains only members who receive, or are eligible to receive, benefits</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>"Automated Child Support Enforcement System" means the automated computer system used by Child Support Services to record child support payments.</p> <p>"Basic Categorical Eligibility" means the status granted to any household that is not eligible for Expanded Categorical Eligibility and contains only members who receive, or are eligible to receive, benefits from Colorado Works, Supplemental Security Income, Old Age Pension, Aid to the Needy and Disabled, Aid to the Blind, or a combination of these benefits (see Section 4.4011.1,1).</p> <p>"Basic Utility Allowance" means a fixed deduction applied to a household that does not pay for heating or cooling and incurs at least two (2) non-heating or non-cooling utility costs, such as electricity, water, sewer, trash, cooking fuel, or telephone.</p> <p>"BCE", see "Basic Categorical Eligibility."</p> <p>"Boarder" means an individual residing with others and paying reasonable compensation to others for lodging and meals.</p> <p>"Boarding house" means an establishment that is licensed as a commercial enterprise and which offers meals and lodging for compensation.</p> <p>"BUA", see "Basic Utility Allowance."</p> <p>"Case payee" means the person appointed to receive the household's benefits.</p> <p>"Case record" means a combination of the physical case file that contains documents pertinent to a household's case; similar documents maintained in an electronic database; and information about the</p>	<p>from Colorado Works, Supplemental Security Income, Old Age Pension, Aid to the Needy and Disabled, Aid to the Blind, or a combination of these benefits.</p> <p>"Basic Utility Allowance (BUA)" means a fixed deduction applied to a household that does not pay for heating or cooling and incurs at least two (2) non-heating or non-cooling utility costs, such as electricity, water, sewer, trash, cooking fuel, or telephone.</p> <p>"Boarder" means an individual residing with others and paying reasonable compensation to others for lodging and meals.</p> <p>"Boarding house" means an establishment that is licensed as a commercial enterprise and which offers meals and lodging for compensation.</p> <p>"Case payee" means the person appointed to receive the household's benefits.</p> <p>"Case record" means a combination of the physical case file that contains documents pertinent to a household's case; similar documents maintained in an electronic database; and information about the household that is contained within the statewide automated system.</p> <p>"Certification period" means the period of time for which a household has been certified to receive benefits.</p> <p>"Civil union" means a legally binding partnership between two individuals without the legal recognition of these individuals as spouses.</p> <p>"Claim" means a debt resulting from an overpayment of benefits that a household is obligated to repay.</p> <p>"Clear and convincing evidence" means evidence which</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>household that is contained within the statewide automated system.</p> <p>"CBMS", see "Colorado Benefits Management System."</p> <p>"Certification period" means the period of time for which a household has been certified to receive benefits.</p> <p>"Civil union" means a legally binding partnership between two individuals without the legal recognition of these individuals as spouses.</p> <p>"Claim" means a debt resulting from an overpayment of benefits that a household is obligated to repay.</p> <p>"Clear and convincing evidence" means evidence which is stronger than a preponderance of evidence and which is unmistakable and free from serious or substantial doubt.</p> <p>"Client error claim" means a debt that has been established for the household to repay due to an overpayment of benefits that was issued to a household due to a misunderstanding or unintentional error on the part of the household.</p> <p>"Collateral contact" means a verbal or written confirmation of a household's circumstances by a person outside the household who has first-hand knowledge of the information, made either in person, electronically submitted or by telephone.</p> <p>"Colorado Electronic Benefit Transfer System (CO/EBTS)" means the electronic system that enables Food Assistance participants or their authorized representatives to redeem their Food Assistance</p>	<p>is stronger than a preponderance of evidence and which is unmistakable and free from serious or substantial doubt.</p> <p>"Collateral contact" means a verbal or written confirmation of a household's circumstances by a person outside the household who has first-hand knowledge of the information, made either in person, electronically submitted or by telephone.</p> <p>"Colorado Benefits Management System (CBMS)." means the computer system used to determine Food Assistance eligibility.</p> <p>"Colorado Electronic Benefit Transfer System (CO/EBTS)" means the electronic system that enables Food Assistance participants or their authorized representatives to redeem their Food Assistance benefits at point-of-sale terminals.</p> <p>"Colorado Unemployment Benefits System (CUBS)" means the electronic system by which Unemployment Insurance Benefits (UIB) are determined by Colorado Department of Labor and Employment.</p> <p>"Communal dining facility" means an establishment approved by FNS that prepares and serves meals for elderly persons, or for Supplemental Security Income (SSI) recipients, and their spouses. This also includes federally subsidized housing for elderly persons at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate State or local agency to offer meals at concessional prices to elderly persons or SSI recipients, and their spouses.</p> <p>"Compromise" means the decision to reduce the amount of a claim that is owed by a household.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>benefits at point-of-sale terminals.</p> <p>“Communal dining facility” means an establishment approved by FNS that prepares and serves meals for elderly persons, or for Supplemental Security Income (SSI) recipients, and their spouses. This also includes federally subsidized housing for elderly persons at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate State or local agency to offer meals at concessional prices to elderly persons or SSI recipients, and their spouses.</p> <p>“Compromise” means the decision to reduce the amount of a claim that is owed by a household.</p> <p>“County Assistance Office” means the county social or human services office that is responsible for administering the Food Assistance Program.</p> <p>“CUBS” means the Colorado Unemployment Benefits System.</p> <p>“D-SNAP” means the Disaster Supplemental Nutrition Assistance Program. This Program shall be implemented as a result of a “major disaster” or “temporary emergency” to provide temporary assistance to households affected by these misfortunes. A Presidential disaster declaration for individual assistance must be declared for the affected areas to be eligible for DSNAP, and the decision to implement this Program after a Presidential declaration shall be at the affected county’s discretion in coordination with the State Food Assistance Office and FNS.</p> <p>“DCA”, see “Disqualification Consent Agreement.”</p> <p>“Demand letter”, see “Notice of Overpayment” and “Repayment Agreement.”</p>	<p>“County Assistance Office” means the county social or human services office that is responsible for administering the Food Assistance Program.</p> <p>“Disaster Supplemental Nutrition Assistance Program. (D-SNAP)” means the Food Assistance provided to the affected areas when a Presidential disaster declaration for individual assistance is declared and the decision to implement this Program after a Presidential declaration shall be at the affected county’s discretion in coordination with the State Food Assistance Office and FNS.</p> <p>“Demand letter”, see “Notice of Overpayment”</p> <p>“Disabled” means a person who:</p> <ol style="list-style-type: none"> <li>1. Receives Supplemental Security Income benefits under Title XVI of the Social Security Act, or the Colorado Supplement, or Aid to the Needy and Disabled- Supplemental Security Income- Colorado Supplement (AND-SSI-CS), or Aid to the Blind-Supplemental Security Income-Colorado Supplement (AB-SSI-CS); or disability or blindness payments under Title I, II, X, or IXV of the Social Security Act;</li> <li>2. Is a veteran with a service-connected disability rated or paid as a total disability under Title 38 of the United States Code or is a veteran receiving a pension for a non-service connected disability;</li> <li>3. Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the Code;</li> <li>4. Is a surviving spouse of a veteran and</li> </ol>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>"Dispute resolution conference" means an informal meeting between a household and the local office to review an action taken on a case and the relevant facts pertaining to such action.</p> <p>"Disqualification Consent Agreement" means the form that allows the individual(s) suspected of intentional Program violation/fraud to consent to his/her disqualification in cases of deferred adjudication.</p> <p>"Disqualified individuals" means any individual who is ineligible to receive Food Assistance due to having been disqualified for an intentional Program violation/fraud, failure to provide or obtain a SSN, ineligible non-citizens, individuals disqualified for failure to cooperate with work requirements, individuals disqualified for failure to cooperate with the State quality assurance division, and able-bodied adults without dependents who have been disqualified after receiving three months of benefits within thirty-six (36) months without meeting the monthly ABAWD work requirement.</p> <p>"Documentary evidence" means written information used to verify the income, expenses, and other circumstances of a household.</p> <p>"Documentation" means the collection of documentary evidence, verification, case notes, and other information related to a household's case upon which eligibility determinations and other decisions are based.</p> <p>"DRC", see "Dispute resolution conference."</p> <p>"Drug and Alcohol Treatment Center" means any residential facility run by a private, nonprofit organization or institution, or a publicly operated</p>	<p>considered in need of aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under Title 38 of the United States Code;</p> <p>5. Is a surviving spouse or child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under Title 38 of the United States Code and has a disability considered permanent under Section 221(i) of the Social Security Act. "Entitled", as used in this definition, refers to those veterans' surviving spouses and children who are receiving the compensation or benefits or have been approved for such benefits but are not yet receiving them;</p> <p>6. Is a person who has a disability considered permanent under Section 221(i) of the Social Security Act (SSA) and receives a federal, state, or local public disability retirement pension;</p> <p>7. Is a person who receives an annuity for disability from the Railroad Retirement Board who is considered disabled by the SSA or who qualifies for Medicare as determined by the Railroad Retirement Board; or</p> <p>8. Is a recipient of interim assistance benefits pending the receipt of the Supplemental Security Income (SSI), disability-related medical assistance under Title XIX of the Social Security Act, or disability-based state assistance benefits provided that the eligibility to receive these benefits is based on disability or blindness criteria which are at least as</p>		



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>community mental health center, under Part B of Title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) that provides rehabilitative treatment to persons participating in a drug or alcohol treatment program.</p> <p>“Dual participation” means the receipt of benefits in more than one Food Assistance household or state in the same calendar month.</p> <p>“Duplicate benefits”, see “Dual Participation.” “EF”, see “Employment First.”</p> <p>“Elderly” means an individual that is sixty (60) years of age or older.</p> <p>“EBT (CO/EBTS)”, see “Colorado Electronic Benefit Transfer System.”</p> <p>“EBT card” means the card issued to persons authorized to receive Food Assistance to which the household’s allotment is credited. Used for Food Assistance purposes to purchase eligible foods at approved retailers.</p> <p>“Employment and Training Program” means a program operated by the Department of Human Services consisting of work, training, education, work experience, and/or job search activities designed to help recipients obtain gainful employment.</p> <p>“Employment First (EF)” means Colorado’s Employment and Training program.</p> <p>“Excess medical deduction” means a deduction from a household’s total gross income applied when a person with a disability or person who is elderly has medical expenses over a specified monthly amount.</p>	<p>stringent as those used under Title XVI of the Social Security Act.</p> <p>“Dispute resolution conference (DRC)” means an informal meeting between a household and the local office to review an action taken on a case and the relevant facts pertaining to such action.</p> <p>“Disqualification Consent Agreement (DCA)” means the form that allows the individual(s) suspected of intentional Program violation/fraud to consent to his/her disqualification in cases of deferred adjudication.</p> <p>“Disqualified individuals” means any individual who is ineligible to receive Food Assistance due to having been disqualified for an intentional Program violation/fraud, failure to provide or obtain a SSN, ineligible non-citizens, individuals disqualified for failure to cooperate with work requirements, individuals disqualified for failure to cooperate with the State quality assurance division, and able-bodied adults without dependents who have been disqualified after receiving three months of benefits within thirty-six(36) months without meeting the monthly ABAWD work requirement.</p> <p>“Documentary evidence” means written information used to verify the income, expenses, and other circumstances of a household.</p> <p>“Documentation” means the collection of documentary evidence, verification, case notes, and other information related to a household’s case upon which eligibility determinations and other decisions are based.</p> <p>“Drug and Alcohol Treatment Center (DAA)” means any residential facility run by a private, nonprofit organization or institution, or a publicly operated community mental health center, under Part B of Title XIX of the Public</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>"Exempt income" means income that is exempt from consideration when determining eligibility for Food Assistance.</p> <p>"Expanded Categorical Eligibility (ECE)" means households that are exempt from having resources considered when determining eligibility for Food Assistance.</p> <p>"Expedited service" means the method by which an application for Food Assistance is processed to ensure that the neediest households have access to Food Assistance benefits no later than the seventh (7th) calendar day following the date of application.</p> <p>"Fair Hearing" means a hearing conducted in person or on the telephone by the Office of Administrative Courts to provide an impartial decision on a household's appeal of a local office's decision or action.</p> <p>"Financial criteria" means the set of rules governing gross and net income and resource standards and the proper methods for computing a household's income and resources.</p> <p>"Fleeing felon" means an individual who is fleeing to avoid prosecution or arrest for a felony under a state or federal law.</p> <p>"FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.</p> <p>"Fraud" means the act committed by a person when obtaining, attempting to obtain, or aiding and abetting another to obtain assistance benefits through intentionally false statements, representations, or the withholding of material information.</p>	<p>Health Service Act (42 U.S.C. 300x et seq.) that provides rehabilitative treatment to persons participating in a drug or alcohol treatment program.</p> <p>"Dual participation" means the receipt of benefits in more than one Food Assistance household or state in the same calendar month.</p> <p>"Elderly" means an individual that is sixty (60) years of age or older.</p> <p>"EBT" means Electronic Benefit Transfer.</p> <p>"EBT card" means the card issued to persons authorized to receive Food Assistance to which the household's allotment is credited. Used for Food Assistance purposes to purchase eligible foods at approved retailers.</p> <p>"Employment and Training Program" means a program operated by the Department of Human Services consisting of work, training, education, work experience, and/or job search activities designed to help recipients obtain gainful employment.</p> <p>"Employment First (EF)" means Colorado's Employment and Training program.</p> <p>"Excess medical deduction" means a deduction from a household's total gross income applied when a person with a disability or a person who is elderly has medical expenses over a specified monthly amount.</p> <p>"Exempt income" means income that is exempt from consideration when determining eligibility for Food Assistance.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>"Full-time student" means a person who has a school schedule equivalent to a full-time curriculum as defined by the institute of higher education the person is attending.</p> <p>"Good cause" means a waiver granted to a person or household a) excusing them from complying with a specific eligibility requirement because compliance could cause adverse consequences to the person or household, or b) providing the household with more time to comply with a specific eligibility requirement.</p> <p>"G-845" means the form submitted to the U.S. Citizenship and Immigration Services to request immigration status verification for a Food Assistance applicant or participant.</p> <p>"Gross Income" means the total of all non-exempt earned and unearned income added together before any deduction or disregard is considered.</p> <p>"Group living arrangement" means a public or private non-profit facility certified under Section 1616(e) of the Social Security Act which serves no more than sixteen (16) people.</p> <p>"HCUA", see "Heating/Cooling Utility Allowance."</p> <p>"Head of household" means the person who is generally regarded as the person with the most knowledge of the household's circumstances. The head of household is the person to whom the local office addresses correspondence and notices about the household's case. This person is generally the individual who completes the application process and is responsible for obtaining and using the household's EBT card.</p>	<p>"Expanded Categorical Eligibility (ECE)" means households that are exempt from having resources considered when determining eligibility for Food Assistance.</p> <p>"Expedited service" means the method by which an application for Food Assistance is processed to ensure that the neediest households have access to Food Assistance benefits no later than the seventh (7th) calendar day following the date of application.</p> <p>"Fair Hearing" means a hearing conducted in person or on the telephone by the Office of Administrative Courts to provide an impartial decision on a household's appeal of a local office's decision or action.</p> <p>"Financial criteria" means the set of rules governing gross and net income and resource standards and the proper methods for computing a household's income and resources.</p> <p>"Fleeing felon" means an individual who is fleeing to avoid prosecution or arrest for a felony under a state or federal law.</p> <p>"FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.</p> <p>"Fraud" means the act committed by a person when obtaining, attempting to obtain, or aiding and abetting another to obtain assistance benefits through intentionally false statements, representations, or the withholding of material information.</p> <p>"Full-time student" means a person who has a school schedule equivalent to a full-time curriculum as defined by the institute of higher education the person is</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>"Heating/Cooling Utility Allowance" means a fixed deduction applied to any household that incurs a heating or cooling expense.</p> <p>"HOH", see "Head of Household."</p> <p>"Homeless" means an individual who lacks a fixed and regular nighttime residence or whose primary residence is: a supervised shelter designed for temporary accommodations, a halfway house or similar facility that provides temporary residence, a place not designed for or ordinarily used as regular sleeping accommodations for human beings, or a temporary accommodation in a residence of another individual for ninety (90) days or less.</p> <p>"Homeless meal provider" means:</p> <p style="padding-left: 40px;">A. A public or private nonprofit establishment that feeds homeless persons; or,</p> <p style="padding-left: 40px;">B. A restaurant which contracts with an appropriate State agency to offer meals at concessional (low or reduced) prices to homeless persons.</p> <p>"Household" means a group of individuals who live together and customarily purchase and prepare food together.</p> <p>"Household income" means all earned and unearned income received or anticipated to be received by household members from all sources, unless specifically exempted for Food Assistance eligibility purposes.</p> <p>"IEVS", see "Income and Eligibility Verification System."</p>	<p>attending.</p> <p>"Good cause" means a waiver granted to a person or household a) excusing them from complying with a specific eligibility requirement because compliance could cause adverse consequences to the person or household, or b) providing the household with more time to comply with a specific eligibility requirement.</p> <p>"G-845" means the form submitted to the U.S. Citizenship and Immigration Services to request immigration status verification for a Food Assistance applicant or participant.</p> <p>"Gross Income" means the total of all non-exempt earned and unearned income added together before any deduction or disregard is considered.</p> <p>"Group Living Arrangement (GLA)" means a public or private non-profit facility certified under Section 1616(e) of the Social Security Act which serves no more than sixteen (16) people.</p> <p>"Head of household (HOH)" means the person who is generally regarded as the person with the most knowledge of the household's circumstances. The head of household is the person to whom the local office addresses correspondence and notices about the household's case. This person is generally the individual who completes the application process and is responsible for obtaining and using the household's EBT card.</p> <p>"Heating/Cooling Utility Allowance (HCUA)" means a fixed deduction applied to any household that incurs a heating or cooling expense.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>"Inadvertent Household Error Claim", see "Client Error Claim."</p> <p>"Income and Eligibility Verification System" means a system used to match applicants' and participants' Social Security Numbers with the Social Security Administration, Internal Revenue Service, and the Department of Labor and Employment to obtain information about household income.</p> <p>"Initial application" means a household's first application for assistance or an application for assistance that is received after the household has been off of the Program for any period following the end of a certification period.</p> <p>"Initial month of application" means the first month for which the household is certified for participation in the Program for those who have not received food benefits in the State previously or following any break after the end of the certification period where the household was not certified for participation. If the household submits an application for recertification prior to the expiration of its certification period and is found eligible for the first month following the end of the certification period, that month shall not be an initial month. Benefits for the initial month of application are prorated in accordance with Section 4.207.2.</p> <p>"Indigent non-citizen" means a sponsored non-citizen who, after considering all income and contributions provided by the sponsor and other sources in conjunction with the non-citizen's own income, is unable to obtain food and shelter amounting to one hundred thirty percent (130%) of the federal poverty level for the non-citizen's household size. When a non-citizen is declared indigent, only the amount</p>	<p>"Homeless" means an individual who lacks a fixed and regular nighttime residence or whose primary residence is: a supervised shelter designed for temporary accommodations, a halfway house or similar facility that provides temporary residence, a place not designed for or ordinarily used as regular sleeping accommodations for human beings, or a temporary accommodation in the residence of another individual for ninety (90) days or less.</p> <p>"Homeless meal provider" means:</p> <p style="padding-left: 40px;">A. A public or private nonprofit establishment that feeds homeless persons; or,</p> <p style="padding-left: 40px;">B. A restaurant which contracts with an appropriate State agency to offer meals at concessional (low or reduced) prices to homeless persons.</p> <p>"Household" means a group of individuals who live together and customarily purchase and prepare food together.</p> <p>"Household income" means all earned and unearned income received or anticipated to be received by household members from all sources, unless specifically exempted for Food Assistance eligibility purposes.</p> <p>"Inadvertent Household Error Claim", means a debt that has been established for the household to repay due to an overpayment of benefits that was issued to a household due to a misunderstanding or unintentional error on the part of the household.</p> <p>"Income and Eligibility Verification System (IEVS)" means a system used to match applicants' and participants' Social Security Numbers with the Social Security Administration, Internal Revenue Service, and</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>provided by the sponsor shall be deemed to the non-citizen. A declaration of indigence may last up to twelve (12) months, but may be renewed at the end of such a period, if necessary. The local office must notify the U.S Attorney General of each indigence determination, including the name of the sponsor and the sponsored non-citizen.</p> <p>"Institution of higher education" means institutions that normally require a high school diploma or equivalency certificate for a student to enroll, such as colleges, universities, and vocational or technical schools.</p> <p>"Intentional Program Violation" means when an individual has intentionally made a false or misleading statement or misrepresented, concealed or withheld facts, or committed or intended to commit any act that constitutes a violation of the Food and Nutrition Act of 2008, the Food Assistance Program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt or possession of Food Assistance benefits.</p> <p>"Intentional" means a false representation of a material fact with knowledge of that falsity or omission of a material fact with knowledge of that omission.</p> <p>"IPV", see "Intentional Program Violation."</p> <p>"IPV hearing", see "Administrative disqualification hearing."</p> <p>"IPV hearing waiver", see "Waiver of administrative disqualification hearing." "Issuance month" means the calendar month for which a benefit allotment is issued.</p> <p>"Lawful Permanent Resident" means a non-citizen legally admitted into the United States to reside on a</p>	<p>the Department of Labor and Employment to obtain information about household income.</p> <p>"Initial application" means a household's first application for assistance or an application for assistance that is received after the household has been off of the Program for any period following the end of a certification period.</p> <p>"Initial month of application" means the first month for which the household is certified for participation in the Program for those who have not received food benefits in the State previously or following any break after the end of the certification period where the household was not certified for participation. If the household submits an application for recertification prior to the expiration of its certification period and is found eligible for the first month following the end of the certification period, that month shall not be an initial month.</p> <p>"Indigent non-citizen" means a sponsored non-citizen who, after considering all income and contributions provided by the sponsor and other sources in conjunction with the non-citizen's own income, is unable to obtain food and shelter amounting to one hundred thirty percent (130%) of the federal poverty level for the non-citizen's household size. When a non-citizen is declared indigent, only the amount provided by the sponsor shall be deemed to the non-citizen. A declaration of indigence may last up to twelve (12) months, but may be renewed at the end of such a period, if necessary. The local office must notify the U.S Attorney General of each indigence determination, including the name of the sponsor and the sponsored non-citizen.</p> <p>"Institution of higher education" means institutions that normally require a high school diploma or equivalency certificate for a student to enroll, such as colleges,</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>permanent basis.</p> <p>"LEAP", see "Low-income Energy Assistance Program."</p> <p>"Liquid resources" means assets such as cash on hand or assets that can be easily converted to cash such as money in checking or savings accounts, saving certificates, or stocks and bonds.</p> <p>"Live-in attendants" means individuals who reside with a household to provide medical, housekeeping, child care, or other personal services.</p> <p>"Local-level Dispute Resolution Conference", see "Dispute Resolution Conference."</p> <p>"Local-level hearing", see "Dispute Resolution Conference"</p> <p>"Local office" means the county department of social/human services that is responsible for administering the Food Assistance Program. In those counties that have more than one office that administers the Food Assistance Program, "local office" shall be inclusive of all local offices within the county that administer the Program.</p> <p>"Low-income Energy Assistance Program" means the Colorado program designed to help low-income applicants pay a portion of their winter heating costs.</p> <p>"Management Evaluation reviews" means state or federal reviews of each county's administration of the Food Assistance Program to determine each county's adherence to federal- and state-mandated requirements. Such reviews are mandated by the</p>	<p>universities, and vocational or technical schools.</p> <p>"Intentional Program Violation (IPV)" means when an individual has intentionally made a false or misleading statement or misrepresented, concealed or withheld facts, or committed or intended to commit any act that constitutes a violation of the Food and Nutrition Act of 2008, the Food Assistance Program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt or possession of Food Assistance benefits.</p> <p>"Intentional" means a false representation of a material fact with knowledge of that falsity or omission of a material fact with knowledge of that omission.</p> <p>"IPV hearing", see "Administrative disqualification hearing."</p> <p>"IPV hearing waiver", see "Waiver of administrative disqualification hearing." "Issuance month" means the calendar month for which a benefit allotment is issued.</p> <p>"Lawful Permanent Resident" means a non-citizen legally admitted into the United States to reside on a permanent basis.</p> <p>"Liquid resources" means assets such as cash on hand or assets that can be easily converted to cash such as money in checking or savings accounts, saving certificates, or stocks and bonds.</p> <p>"Live-in attendants" means individuals who reside with a household to provide medical, housekeeping, child care, or other personal services.</p> <p>"Local-level Dispute Resolution Conference", see "Dispute Resolution Conference."</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>Food and Nutrition Service of the USDA.</p> <p>“Major disaster” means a disaster or catastrophe as determined by the President of the United States pursuant to the Disaster Relief Act of 1974.</p> <p>“Mandatory Work Registrant” means an individual age sixteen (16) to sixty (60) who has not met any Federal exemptions from SNAP work requirements and is therefore required to register for work or be registered by the State agency.</p> <p>“Mass update” means a change in data or policy that affects the entire state-wide caseload or a portion of the caseload.</p> <p>“Material information” means information to which a reasonable person would attach importance when determining a course of action.</p> <p>“ME reviews”, see “Management Evaluation reviews.”</p> <p>“Migrant farm worker” means a person who travels away from home on a regular basis to follow the flow of seasonal agricultural work.</p> <p>“Minimum benefit” means the minimum amount of benefits issued to one- and two-person households that are eligible for assistance, but whose issuance calculates to less than the federally prescribed minimum allotment.</p> <p>“Net income test” means the one hundred percent (100%) federal poverty level under which a household's income must fall after all allowable deductions are considered in order to be considered eligible. This level is specific to the household size as defined by USDA, FNS.</p>	<p>“Local office” means the county department of social/human services that is responsible for administering the Food Assistance Program. In those counties that have more than one office that administers the Food Assistance Program, “local office” shall be inclusive of all local offices within the county that administer the Program.</p> <p>“Low-Income Home Energy Assistance Program (LEAP)” means the Colorado program designed to help low-income applicants pay a portion of their winter heating costs.</p> <p>“Management Evaluation (ME) reviews” means state or federal reviews of each county’s administration of the Food Assistance Program to determine each county’s adherence to federal- and state-mandated requirements. Such reviews are mandated by the Food and Nutrition Service of the USDA.</p> <p>“Mandatory Work Registrant” means an individual age sixteen (16) to sixty (60) who has not met any Federal exemptions from SNAP work requirements and is therefore required to register for work or be registered by the State agency.</p> <p>“Mass update” means a change in data or policy that affects the entire state-wide caseload or a portion of the caseload.</p> <p>“Material information” means information to which a reasonable person would attach importance when determining a course of action.</p> <p>“Migrant farm worker” means a person who travels away from home on a regular basis to follow the flow of seasonal agricultural work.</p>		



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>"NOA", see "Notice of Action."</p> <p>"Non-ABAWD County" means a county that is not requiring ABAWDs to meet the mandatory monthly ABAWD work requirement; although, the individual may be required to participate in non-ABAWD work program activities.</p> <p>"Non-Employment First County" means a county in which there is no Employment First Program; although, work registrants must still sign an affidavit attesting that he/she will seek work opportunities through available resources.</p> <p>"Non-liquid resources" means assets which cannot be easily converted into cash such as vehicles and real property.</p> <p>"Non-financial criteria" means the set of rules governing elements not related to the gross and net income and resource standards.</p> <p>"Notice of Action" means the state-prescribed form sent to a household every time an action is taken to increase, decrease, suspend, deny, terminate, or otherwise affect a household's benefits. This form describes the action taken upon a household's case and the resulting effect.</p> <p>"Notice of overpayment" means a notice sent to a household upon the establishment of a claim against the household for an overpayment of benefits.</p> <p>"On-the-job training" means training provided to an employee after he or she is hired. Such training is designed for individuals who do not have the necessary work experience required for the job.</p>	<p>"Minimum benefit" means the minimum amount of benefits issued to one- and two-person households that are eligible for assistance, but whose issuance calculates to less than the federally prescribed minimum allotment.</p> <p>"Net income test" means the one hundred percent (100%) federal poverty level under which a household's income must fall after all allowable deductions are considered in order to be considered eligible. This level is specific to the household size as defined by USDA, FNS.</p> <p>"Non-ABAWD County" means a county that is not requiring ABAWDs to meet the mandatory monthly ABAWD work requirement; although, the individual may be required to participate in non-ABAWD work program activities.</p> <p>"Non-Employment First County" means a county in which there is no Employment First Program; although, work registrants must still sign an affidavit attesting that he/she will seek work opportunities through available resources.</p> <p>"Non-liquid resources" means assets which cannot be easily converted into cash such as vehicles and real property.</p> <p>"Non-financial criteria" means the set of rules governing elements not related to the gross and net income and resource standards.</p> <p>"Notice of Action (NOA)" means the state-prescribed form sent to a household every time an action is taken to increase, decrease, suspend, deny, terminate, or otherwise affect a household's benefits. This form</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>"One Utility Allowance" means a fixed deduction given to any household that is not eligible to receive the HCUA or BUA and incurs only one (1) non-heating or non-cooling utility expense, such as electricity, water, sewer, trash, or cooking fuel. The OUA is not allowed if the household's only utility expense is a telephone.</p> <p>"OUA", see "One Utility Allowance."</p> <p>Over-issuance" means the amount of Food Assistance benefits issued to a household that exceeds the amount it was eligible to receive.</p> <p>"Parolee" means a non-citizen allowed into the United States for urgent humanitarian reasons or when the non-citizen's entry is determined to be for significant public benefit. Parole does not constitute a formal admission to the United States and confers temporary status only, requiring parolees to leave when the conditions supporting their parole cease to exist.</p> <p>"Payment Error Rate" means the sum of the overpayment error rate and the underpayment error rate, which is the value of all over and underpaid allotments expressed as a percentage of all allotments issued to the cases reviewed, excluding those cases processed by SSA personnel or participating in certain demonstration projects designated by FNS.</p> <p>"Period of ineligibility" means the period of time a person is ineligible to receive Food Assistance benefits as a result of a failure to cooperate with either a state or federal QA review.</p> <p>"Periodic Report Form" means the report that must be submitted by the household during the twelfth (12th) month of a twenty four (24) month certification period. The purpose of this form is to allow the household to report any changes that occurred during the first half</p>	<p>describes the action taken upon a household's case and the resulting effect.</p> <p>"Notice of overpayment" means a notice sent to a household upon the establishment of a claim against the household for an overpayment of benefits.</p> <p>"On-the-job training (OJT)" means training provided to an employee after he or she is hired. Such training is designed for individuals who do not have the necessary work experience required for the job.</p> <p>"One Utility Allowance (OUA)" means a fixed deduction given to any household that is not eligible to receive the HCUA or BUA and incurs only one (1) non-heating or non-cooling utility expense, such as electricity, water, sewer, trash, or cooking fuel. The OUA is not allowed if the household's only utility expense is a telephone.</p> <p>"Over-issuance" means the amount of Food Assistance benefits issued to a household that exceeds the amount it was eligible to receive.</p> <p>"Parolee" means a non-citizen allowed into the United States for urgent humanitarian reasons or when the non-citizen's entry is determined to be for significant public benefit. Parole does not constitute a formal admission to the United States and confers temporary status only, requiring parolees to leave when the conditions supporting their parole cease to exist.</p> <p>"Payment Error Rate (PER)" means the sum of the overpayment error rate and the underpayment error rate, which is the value of all over and underpaid allotments expressed as a percentage of all allotments issued to the cases reviewed, excluding those cases processed by SSA personnel or participating in certain</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>of the twenty four (24) month certification period and for the local office to determine the household's continued eligibility for the remaining twelve (12) months of the household's certification period.</p> <p>"Person with disabilities" means a person who meets any of the following criteria:</p> <p>A. Receives Supplemental Security Income benefits under Title XVI of the Social Security Act, or the Colorado Supplement, or Aid to the Needy Disabled-Supplemental Security Income-Colorado Supplement (AND-SSI-CS), or Aid to the Blind-Supplemental Security Income-Colorado Supplement (AB-SSI-CS); or disability or blindness payments under Title I, II, X, or IXV of the Social Security Act;</p> <p>B. Is a veteran with a service-connected disability rated or paid as a total disability under Title 38 of the United States Code or is a veteran receiving a pension for a non-service connected disability;</p> <p>C. Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;</p> <p>D. Is a surviving spouse of a veteran and considered in need of aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under Title 38 of the United States Code;</p> <p>E. Is a surviving spouse or child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under Title 38 of the United States Code and has a</p>	<p>demonstration projects designated by FNS.</p> <p>"Period of ineligibility" means the period of time a person is ineligible to receive Food Assistance benefits as a result of a failure to cooperate with either a state or federal QA review.</p> <p>"Periodic Report Form (PRF)" means the report that must be submitted by the household during the twelfth (12th) month of a twenty four (24) month certification period. The purpose of this form is to allow the household to report any changes that occurred during the first half of the twenty four (24) month certification period and for the local office to determine the household's continued eligibility for the remaining twelve (12) months of the household's certification period.</p> <p>"Post high school education" means colleges, universities, and post-high school level technical and vocational schools.</p> <p>"Prospective budgeting" means the method of computing a household's monthly allotment by using current circumstances and reasonably anticipated income for the month in which the allotment will be issued.</p> <p>"Prudent Person Principle (PPP)" means a worker's reasonable judgment when determining the proper course of action in a given situation in order to make an eligibility determination.</p> <p>"Public Assistance (PA)" means any of the following programs authorized by the Social Security Act of 1935, as amended: Old Age Pension, TANF, including TANF for children of unemployed fathers, aid to the blind, aid to the permanently and totally disabled and aid to aged, blind or disabled.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>disability considered permanent under Section 221(i) of the Social Security Act. "Entitled" in this definition refers to those veterans' surviving spouses and children who are receiving the compensation or benefits or have been approved for such benefits but are not receiving them;</p> <p>F. Is a person who has a disability considered permanent under Section 221(i) of the Social Security Act (SSA) and receives a federal, state, or local public disability retirement pension;</p> <p>G. Is a person who receives an annuity for disability from the Railroad Retirement Board who is considered disabled by the SSA or who qualifies for Medicare as determined by the Railroad Retirement Board;</p> <p>H. Is a recipient of interim assistance benefits pending the receipt of Supplemental Security Income (SSI), disability-related medical assistance under Title XIX of the Social Security Act, or disability- based state assistance benefits provided that the eligibility to receive these benefits is based on disability or blindness criteria which are at least as stringent as those used under Title XVI of the Social Security Act.</p> <p>"Post high school education" means colleges, universities, and post-high school level technical and vocational schools.</p> <p>"Prospective budgeting" means the method of computing a household's monthly allotment by using current circumstances and reasonably anticipated income for the month in which the allotment will be issued.</p> <p>"Prudent Person Principle" means a worker's reasonable judgment when determining the proper</p>	<p>"PA households" means households that contain only persons who receive TANF or adult financial cash grants.</p> <p>"Quality Assurance (QA)" means the division responsible for reviewing Food Assistance cases to determine if the proper eligibility determination was made and if the correct amount of benefits were issued to a household in a given month.</p> <p>"QA active case" means cases where a household was certified prior to or during the sample month and issued Food Assistance benefits for the sample month.</p> <p>"QA negative case" means cases where a household was denied certification to receive Food Assistance benefits in the sample month or which had its participation in the Program terminated during a certification period effective for the sample month.</p> <p>"Qualified non-citizen" means an individual who meets the specific definition of "qualified alien" as defined by the Food and Nutrition Service, United States Department of Agriculture, which includes lawful permanent residents, asylees, refugees, parolees, individuals granted withholding of deportation or removal, conditional entrants, Cuban or Haitian entrants, battered aliens, and non-citizen victims of a severe form of trafficking. This term is not itself an immigration status, but rather includes a collection of immigration statuses. It is a term used solely for Federal public benefits purposes. Qualified non-citizens are not automatically eligible for assistance, but rather must meet all other eligibility requirements.</p> <p>"Quality Control review" means a review of a statistically valid sample of active and negative cases to determine</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>course of action in a given situation in order to make an eligibility determination.</p> <p>“Public Assistance (PA)” means any of the following programs authorized by the Social Security Act of 1935, as amended: Old Age Pension, TANF, including TANF for children of unemployed fathers, aid to the blind, aid to the permanently and totally disabled and aid to aged, blind or disabled.</p> <p>“Public assistance households” means households that contain only persons who receive TANF or adult financial cash grants.</p> <p>“QA” means quality assurance and refers to the division responsible for reviewing Food Assistance cases to determine if the proper eligibility determination was made and if the correct amount of benefits were issued to a household in a given month.</p> <p>“QA active case” means cases where a household was certified prior to or during the sample month and issued Food Assistance benefits for the sample month.</p> <p>“QA negative case” means cases where a household was denied certification to receive Food Assistance benefits in the sample month or which had its participation in the Program terminated during a certification period effective for the sample month.</p> <p>“Qualified non-citizen” means an individual who meets the specific definition of “qualified alien” as defined by the Food and Nutrition Service, United States Department of Agriculture, which includes lawful permanent residents, asylees, refugees, parolees, individuals granted withholding of deportation or removal, conditional entrants, Cuban or Haitian entrants, battered aliens, and non-citizen victims of a</p>	<p>the extent to which households are receiving the Food Assistance allotments to which they are entitled, and to determine the extent to which decisions to deny, suspend, or terminate cases are correct.</p> <p>“Quest card” means Colorado’s specific version of the EBT card.</p> <p>“Recoupment” means the withholding of a portion of a household’s monthly allotment to pay back an over-issuance.</p> <p>“Repayment agreement” means the form sent to a household upon the establishment of a claim that outlines the household’s responsibility and options for repayment.</p> <p>“Restoration” means a payment of benefits made to a household who was eligible to receive the amount in a past month but did not receive the payment.</p> <p>“Roomer” means an individual to whom a household furnishes lodging, but not meals, for compensation.</p> <p>“Sanction” means a specified period of ineligibility imposed against an individual who failed to take a required action as part of his or her eligibility for either Food Assistance or Colorado Works.</p> <p>“Self-employment” means a situation where some or all income is received from a self-operated business or enterprise in which the individual retains control over work or services offered and assumes the necessary business risks and expenses connected with the operation of the business.</p> <p>“Shelter for battered women and children” means a</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>severe form of trafficking. This term is not itself an immigration status, but rather includes a collection of immigration statuses. It is a term used solely for Federal public benefits purposes. Qualified non-citizens are not automatically eligible for assistance, but rather must meet all other eligibility requirements.</p> <p>"Quality Control review" means a review of a statistically valid sample of active and negative cases to determine the extent to which households are receiving the Food Assistance allotments to which they are entitled, and to determine the extent to which decisions to deny, suspend, or terminate cases are correct.</p> <p>"Qwest card" means Colorado's specific version of the EBT card. "Recertification/redetermination application", see "Application for Redetermination."</p> <p>"Recoupment" means the withholding of a portion of a household's monthly allotment to pay back an over-issuance.</p> <p>"Repayment agreement" means the form sent to a household upon the establishment of a claim that outlines the household's responsibility and options for repayment.</p> <p>"Restoration" means a payment of benefits made to a household who was eligible to receive the amount in a past month but did not receive the payment.</p> <p>"Roomer" means an individual to whom a household furnishes lodging, but not meals, for compensation. "RRR", see "Application for Redetermination."</p> <p>"Sanction" means a specified period of ineligibility imposed against an individual who failed to take a required action as part of his or her eligibility for either Food Assistance or Colorado Works.</p>	<p>public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.</p> <p>"Simplified Reporting" means the reporting status granted to households receiving either a six (6) or twenty-four (24) month certification period. Households considered simplified reporting households are not required to report any changes to household circumstances throughout the course of the certification period unless the change that occurred causes the household's combined gross income to rise above one hundred thirty percent (130%) of the federal poverty level for the applicable household size. Households receiving a twenty four (24) month certification period have the additional requirement of completing and submitting a periodic report form (PRF) at the twelve (12) month point of the certification period on which all changes that have occurred since initial application must be reported.</p> <p>"SNAP" means Supplemental Nutrition Assistance Program, which is referred to as the Food Assistance Program in Colorado.</p> <p>"Sponsor" means a person who has executed an affidavit(s) of support or similar agreement on behalf of a non-citizen as a condition of the non-citizen's entry or admission to the US as a permanent resident.</p> <p>"Sponsored non-citizen" means those non-citizens lawfully admitted for permanent residence into the United States who have been sponsored by an individual for entry into the country.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>"SAVE", see "Systematic Alien Verification for Entitlements."</p> <p>"Self-employment" means a situation where some or all income is received from a self-operated business or enterprise in which the individual retains control over work or services offered and assumes the necessary business risks and expenses connected with the operation of the business.</p> <p>"Shelter for battered women and children" means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.</p> <p>"Simplified Reporting" means the reporting status granted to households receiving either a six (6) or twenty-four (24) month certification period. Households considered simplified reporting households are not required to report any changes to household circumstances throughout the course of the certification period unless the change that occurred causes the household's combined gross income to rise above one hundred thirty percent (130%) of the federal poverty level for the applicable household size. Households receiving a twenty four (24) month certification period have the additional requirement of completing and submitting a periodic report form (see "Periodic report form") at the twelve (12) month point of the certification period on which all changes that have occurred since initial application must be reported.</p> <p>"SNAP" means Supplemental Nutrition Assistance Program, which is referred to as the Food Assistance Program in Colorado.</p>	<p>"Standard Eligibility" means the set of rules applicable to households that do not fall under "Expanded categorical eligibility" or "Basic categorical eligibility." Households considered under standard eligibility rules are subject to resource limits as a condition of eligibility.</p> <p>"State Department" means the Colorado Department of Human Services.</p> <p>"State office or Division" means the agency of the state government that has the responsibility for the oversight and monitoring of each county department's administration of the Food Assistance Program.</p> <p>"State-level fair hearing" means a review requested by an applicant or recipient which is held before an Administrative Law Judge (ALJ) to establish whether an action or eligibility determination taken was correct.</p> <p>"Striker" means an individual who is involved in a strike or other concerted stoppage of work by employees, including a stoppage by reason of the expiration of a collective bargaining agreement and any concerted slowdown or other concerted interruption of operations by employees.</p> <p>"Supplement" means a payment of additional allowable benefits made for the current issuance month.</p> <p>"Supplemental Security Income (SSI)" means monthly cash payments made under the authority of: (1) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled; (2) section 1616(a) of the Social Security Act; or (3) section 212(a) of Pub. L. 93-66.</p> <p>"Systematic Alien Verification for Entitlements (SAVE)" means the system allowing for the validation of</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>"Sponsor" means a person who has executed an affidavit(s) of support or similar agreement on behalf of a non-citizen as a condition of the non-citizen's entry or admission to the US as a permanent resident.</p> <p>"Sponsored non-citizen" means those non-citizens lawfully admitted for permanent residence into the United States who have been sponsored by an individual for entry into the country.</p> <p>"Supplemental Security Income (SSI)" means monthly cash payments made under the authority of: (1) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled; (2) section 1616(a) of the Social Security Act; or (3) section 212(a) of Pub. L. 93-66.</p> <p>"Standard Eligibility" means the set of rules applicable to households that do not fall under "Expanded categorical eligibility" or "Basic categorical eligibility." Households considered under standard eligibility rules are subject to resource limits as a condition of eligibility.</p> <p>"State Department" means the Colorado Department of Human Services.</p> <p>"State office or Division" means the agency of the state government that has the responsibility for the oversight and monitoring of each county department's administration of the Food Assistance Program.</p> <p>"State-level fair hearing" means a review requested by an applicant or recipient which is held before an Administrative Law Judge (ALJ) to establish whether an action or eligibility determination taken was correct.</p> <p>"Striker" means an individual who is involved in a</p>	<p>immigration statuses of non-citizen applicants and participants through access to centralized U.S. Citizenship and Immigration Service (USCIS) data.</p> <p>"Telephone allowance" means a fixed deduction given to any household not incurring utility expenses other than the expense for a telephone.</p> <p>"Temporary Assistance for Needy Families (TANF) or Colorado Works (CW)" means the cash assistance program also known as Title IV-A of the Social Security Act.</p> <p>"Temporary emergency" means an emergency caused by any natural or human-caused disaster, other than a major disaster declared by the President of the United States under the Disaster Relief Act of 1974, which is determined by FNS to have disrupted commercial channels of food distribution.</p> <p>"Thrifty Food Plan" means the diet required to feed a family of four (4) persons consisting of a man and a woman twenty (20) through fifty (50) years of age, a child six (6) through eight (8) years of age, and a child nine (9) through eleven (11) years of age, determined in accordance with the U.S. Department of Agriculture. The cost of such a diet shall be the basis for uniform allotments for all households regardless of their actual composition.</p> <p>"Trafficking" means attempting to buy, sell, steal, or otherwise affect an exchange of Food Assistance benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and Personal Identification Numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or</p>		



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>strike or other concerted stoppage of work by employees, including a stoppage by reason of the expiration of a collective bargaining agreement and any concerted slowdown or other concerted interruption of operations by employees.</p> <p>“Supplement” means a payment of additional allowable benefits made for the current issuance month. “Systematic Alien Verification for Entitlements” means the system allowing for the validation of immigration statuses of non-citizen applicants and participants through access to centralized U.S. Citizenship and Immigration Service (USCIS) data.</p> <p>“Telephone allowance” means a fixed deduction given to any household not incurring utility expenses other than the expense for a telephone.</p> <p>“TANF” means Temporary Assistance for Needy Families.</p> <p>“Temporary emergency” means an emergency caused by any natural or human-caused disaster, other than a major disaster declared by the President of the United States under the Disaster Relief Act of 1974, which is determined by FNS to have disrupted commercial channels of food distribution.</p> <p>“Thrifty Food Plan” means the diet required to feed a family of four (4) persons consisting of a man and a woman twenty (20) through fifty (50) years of age, a child six (6) through eight (8) years of age, and a child nine (9) through eleven (11) years of age, determined in accordance with the U.S. Department of Agriculture. The cost of such a diet shall be the basis for uniform allotments for all households regardless of their actual composition.</p> <p>“Trafficking” means attempting to buy, sell, steal, or</p>	<p>collusion with others, or acting alone. Trafficking also includes (1) the exchange of Food Assistance benefits for firearms, ammunition, explosives, or controlled substances, (2) the resale of a product purchased with Food Assistance benefits in exchange for cash or consideration other than eligible food, and (3) the purchase of a product that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount.</p> <p>“Under-issuance” means the difference between the allotment the household was eligible to receive and the allotment the household actually received, which was lower than what the household was eligible to receive.</p> <p>“Valid Application” means a state-prescribed form completed with name, address, and signature.</p> <p>“Vendor payments” means money payments that are not payable directly to a household, but are paid to a third party for a household expense.</p> <p>“Verification” means confirmation of a household’s statements through written, verbal, or electronic means.</p> <p>“Verified upon receipt (VUR)” means information that is provided directly from the primary source and which is not questionable. Information considered verified upon receipt shall be acted upon for both simplified reporting households and non-simplified reporting households.</p> <p>“Voluntary Work Registrant” means an individual who chooses to participate in the program and is not mandated to participate by the State or Federal regulations.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>otherwise affect an exchange of Food Assistance benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and Personal Identification Numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone. Additionally, any bona fide recipient of Food Assistance or his or her authorized representative who knowingly transfers Food Assistance benefits to another who does not, or does not intend to use said Food Assistance for the benefit of the Food Assistance household for whom the Food Assistance benefits were intended, has committed trafficking.</p> <p>“Under-issuance” means the difference between the allotment the household was eligible to receive and the allotment the household actually received, which was lower than what the household was eligible to receive.</p> <p>“UIB” means Unemployment Insurance Benefits.  “Verification” means confirmation of a household’s statements through written, oral, or electronic means  “Verified upon receipt” means information that is provided directly from the primary source and which is not questionable. Information considered verified upon receipt shall be acted upon for both simplified reporting households and non-simplified reporting households.</p> <p>“Voluntary quit” means when a person voluntarily quits or reduces his or her work hours to less than thirty (30) per week or who are now earning less than the equivalent of thirty (30) hours per week paid at the federal minimum wage.</p> <p>“Voluntary Work Registrant” means an individual who chooses to participate in the program and is not</p>	<p>“Waiver of Administrative Disqualification Hearing” means a waiver sent to individuals suspected of intentional Program violation which presents the individual with the option of waiving his or her right to an administrative hearing, essentially accepting the appropriate disqualification without necessarily admitting the violation.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>mandated to participate by the State or Federal regulations.</p> <p>"Waiver of Administrative Disqualification Hearing" means a waiver sent to individuals suspected of intentional Program violation which presents the individual with the option of waiving his or her right to an administrative hearing, essentially accepting the appropriate disqualification without necessarily admitting the violation.</p>			
4.200	Added description to section heading.	APPLICATIONS AND RECERTIFICATIONS	<p>APPLICATIONS AND RECERTIFICATIONS</p> <p>This section specifically discusses processing of initial applications and applications for recertification.</p>	Provides clarity as to the content of the entire section.	
4.201(D-H)	Removed outdated and duplicative information.	<p>APPLICATION PROCESSING</p> <p>D. The household may voluntarily withdraw its application at any time prior to a determination of eligibility. After any determination of eligibility has been made, either through the use of the automated system or outside of the automated system, the local office cannot choose to withdraw the application. Once a determination of eligibility is made, the household may voluntarily terminate its participation. Any reason given by the household for withdrawal or termination shall be documented in the case file. A Notice of Action form, indicating voluntary withdrawal of application or voluntary termination of eligibility, shall be sent to the household within ten (10) calendar days of the decision, to confirm the action taken. The household shall be advised of its right to reapply at any time subsequent to a withdrawal.</p> <p>E. No household shall have its Food Assistance benefits denied solely on the basis of its application to participate in another program being denied or its benefits under another program being terminated, without a separate determination by the local office that a household failed to satisfy a Food Assistance Program eligibility requirement.</p>	<p>APPLICATION PROCESSING</p> <p>D. The household may voluntarily withdraw its application at any time prior to a determination of eligibility. Once a determination of eligibility is made, the household may voluntarily terminate its participation. Any reason given by the household for withdrawal or termination shall be documented in the case file. A Notice of Action form, indicating voluntary withdrawal of application or voluntary termination of eligibility, shall be sent to the household within ten (10) calendar days of the decision, to confirm the action taken. The household shall be advised of its right to reapply at any time subsequent to a withdrawal.</p> <p>E. No household shall have its Food Assistance benefits denied solely on the basis of its application to participate in another program being denied or its benefits under another program being terminated, without a separate determination by the local office that a household failed to satisfy a Food Assistance Program eligibility requirement.</p> <p>F. Households denied Food Assistance that have an SSI application pending shall be informed on the notice of denial of the possibility of categorical eligibility if they</p>	<p>Eligibility determinations should only be made in the automated system.</p> <p>Applications submitted to SSA information is contained in 4.202.3.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>F. The State has entered into an agreement with the Social Security Administration (SSA) whereby each SSA office will complete and forward Food Assistance applications from households comprised of only persons who receive Supplemental Security Income (SSI) or persons applying for SSI provided the household is not participating in the Food Assistance Program and has no applications pending. After interviewing the household and obtaining available verification, the SSA office will forward the application to the appropriate local office for eligibility determination. Residents of public institutions who apply for SSI prior to their release from an institution under the Social Security Administration prerelease program for the institutionalized shall be permitted to apply for Food Assistance at the same time they apply for SSI. See Sections 4.202.3 through 4.202.31 for the provisions regarding the SSA accepting applications and forwarding them to the county department.</p> <p>The agreement also provides that counties may outstation eligibility worker(s) at district SSA offices, in accordance with Section 4.202.33. In the event a county desires to outstation an eligibility worker(s) in the local SSA office to process Food Assistance applications, it would be necessary for the county to request the State to negotiate an appropriate revision of the agreement.</p> <p>G. Households denied Food Assistance that have an SSI application pending shall be informed on the notice of denial of the possibility of categorical eligibility if they become SSI recipients. Residents of public institutions who apply jointly for SSI and Food Assistance benefits prior to their release from the institution shall not be eligible for Food Assistance until the individual has been released from the public institution.</p>	<p>become SSI recipients. Residents of public institutions who apply jointly for SSI and Food Assistance benefits prior to their release from the institution shall not be eligible for Food Assistance until the individual has been released from the public institution.</p> <p>G. Local offices shall record in the automated system racial and ethnic data provided by an applicant household. The purpose of obtaining this information is not to affect the eligibility or the level of benefits, but rather to ensure that Program benefits are distributed without regard to race, color, or national origin. In those instances when the information is not provided voluntarily by the household on the application form, the local office shall use alternative means of collecting the ethnic and racial data on households, such as by observation during the interview. Under no circumstance should an eligibility worker challenge or change a self-declaration made by a household member</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		H. Local offices shall record in the automated system racial and ethnic data provided by an applicant household. The purpose of obtaining this information is not to affect the eligibility or the level of benefits, but rather to ensure that Program benefits are distributed without regard to race, color, or national origin. In those instances when the information is not provided voluntarily by the household on the application form, the local office shall use alternative means of collecting the ethnic and racial data on households, such as by observation during the interview. Under no circumstance should an eligibility worker challenge or change a self-declaration made by a household member			
4.202	Updated language to match federal regulation.	<p><b>FILING AN APPLICATION</b></p> <p>A. Regardless of what type of application system is used, the local office must provide a means for applicants to immediately begin the application process. The household shall be advised it may file an incomplete application form as long as the form contains a legible name, address, and is signed by a responsible household member or the household's authorized representative. Local offices shall accept applications for Food Assistance during normal business hours and shall not be restrictive to a certain day or time of day. The household shall be advised that it need not be interviewed before filing an application. The county department shall inform applicants that receiving Food Assistance will have no bearing on any other program's time limits that may apply to the household.</p> <p>B. Persons who request information for Food Assistance must be advised of expedited service provisions and encouraged to submit an application so that eligibility processing can begin. County local offices shall encourage the filing of an application form</p>	<p><b>FILING AN APPLICATION</b></p> <p>A. Regardless of what type of application system is used, the local office must provide a means for applicants to immediately begin the application process. The household shall be advised it may file an incomplete application form as long as the form contains a name, address, and is signed by a responsible household member or the household's authorized representative. Signatures include handwritten signatures, electronic signature techniques, recorded telephonic signatures, or documented gestured signatures. A valid handwritten signature includes a designation of an X. Local offices shall accept applications for Food Assistance during normal business hours and shall not be restricted to a certain day or time of day. The household shall be advised that it need not be interviewed before filing an application. The county department shall inform applicants that receiving Food Assistance will have no bearing on any other program's time limits that may apply to the household</p> <p>B. Persons who request information for Food Assistance must be advised of expedited service provisions and</p>	Federal regulations state a valid application signature can take various forms and only require a state agency provide a client a copy of their completed application upon their request.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>on the same day the household or its representative contacts the local office in person or by telephone and expresses interest in obtaining Food Assistance, or indicates the household is without food or the means to obtain food.</p> <p>C. Local offices shall make application forms readily accessible to applicant households, as well as to groups and organizations, and shall also provide an application form to anyone who requests the form. If a household contacting the local office by telephone does not wish to come to the appropriate office to file the application that same day and instead prefers receiving an application through the mail, the local office shall mail an application form to the household on the same day the telephone request is received. An application shall also be mailed on the same day a written request for Food Assistance is received.</p> <p>Application forms shall be made available in Spanish, or other appropriate languages for use in those counties where it has been determined in conjunction with the State local office that there are a significant number of households without an adult member fluent in English.</p> <p>D. The local office shall annotate the application form by recording the date the form was received and processing time begins. Applications signed through the use of electronic signature technique or applications containing a handwritten signature, which are transmitted by fax, or other electronic transmissions, are acceptable as a valid application when received by the local office. When an application is submitted through such means outside of business hours, the application filing date shall be recorded as the next business day.</p> <p>E. Households must file Food Assistance applications</p>	<p>encouraged to submit an application so that eligibility processing can begin. County local offices shall encourage the filing of an application form on the same day the household or its representative contacts the local office in person or by telephone and expresses interest in obtaining Food Assistance, or indicates the household is without food or the means to obtain food.</p> <p>C. Local offices shall make application forms readily accessible to applicant households, as well as to groups and organizations, and shall also provide an application form to anyone who requests the form. If a household contacting the local office by telephone does not wish to come to the appropriate office to file the application that same day and instead prefers receiving an application through the mail, the local office shall mail an application form to the household on the same day the telephone request is received. An application shall also be mailed on the same day a written request for Food Assistance is received.</p> <p>Application forms shall be made available in Spanish, or other appropriate languages for use in those counties where it has been determined in conjunction with the State local office that there are a significant number of households without an adult member fluent in English.</p> <p>D. The State or local office shall annotate the application form by recording the date the form was received. All valid applications, which are paper, transmitted by fax, or other electronic transmissions, are acceptable. When an application is submitted through such means outside of business hours, the application filing date shall be recorded as the next business day.</p> <p>E. Households must file applications by submitting the forms in person, through an authorized representative, by fax or other electronic transmission, by mail or by</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>by submitting the forms in person, through an authorized representative, by fax or other electronic transmission, by mail or by completing an on- line electronic application. The local office must provide households that complete an on-line electronic application in person at the local office the opportunity to review the information that has been recorded electronically and must provide the household with a copy of the information for its records. Local offices shall advise applicants if a fax machine or other electronic transmission is available for the submission of an application.</p> <p>F. Applications are valid for a period of sixty (60) calendar days. Households reapplying for benefits following a determination of ineligibility more than sixty (60) calendar days from the date of the original application date must submit a new application.</p> <p>G. When households contact the wrong certification office within a county either in person or by telephone, the certification office shall give the household the address and telephone number of the appropriate office. The certification office shall also offer to forward the household's application to the appropriate office that same day. If the household has mailed its application to the wrong office within a county, the receiving office shall mail the application to the appropriate office on the same day or forward it the next day by any means that ensures the application will arrive at the appropriate office the same day it is forwarded. An application shall be considered filed and processing standards shall begin the day it is received by any local office in the correct county. A county that receives an application that belongs to another county may secure the application date, process the application to completion, issue the household an EBT card, and then transfer the case to the correct county once the final eligibility decision is</p>	<p>completing an on- line electronic application. The local office must provide the household with a copy of their completed application upon the request of the client. A copy of a completed application can be a copy of the information provided by the client that was used or will be used to determine a household's eligibility and benefit allotment. At the option of the household, this may be provided in an electronic format.</p> <p>F. Applications are valid for a period of sixty (60) calendar days. Households reapplying for benefits following a determination of ineligibility more than sixty (60) calendar days from the date of the original application date must submit a new application.</p> <p>G. When households contact the wrong certification office within a county either in person or by telephone, the certification office shall give the household the address and telephone number of the appropriate office. The certification office shall also offer to forward the household's application to the appropriate office that same day. If the household has mailed its application to the wrong office within a county, the receiving office shall mail the application to the appropriate office on the same day or forward it the next day by any means that ensures the application will arrive at the appropriate office the same day it is forwarded. An application shall be considered filed and processing standards shall begin the day it is received by any local office in the correct county. A county that receives an application that belongs to another county may secure the application date, process the application to completion, issue the household an EBT card, and then transfer the case to the correct county once the final eligibility decision is made.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		made.			
4.202.2	Removed redundant language.	<p>4.202.2 Application Filing by Ineligible Non-Citizens</p> <p>The ineligibility of certain non-citizens for Program benefits will not prohibit the remaining household members from applying for and receiving Food Assistance. Ineligible non-citizens living in an applicant household shall not be considered eligible household members for Food Assistance purposes; however the ineligible non-citizen's income and resources are considered in the household's eligibility determination and benefit allotment.</p> <p>When the eligible members of a household are all unemancipated minors and the only adult is an ineligible non-citizen, the ineligible non-citizen may make application on behalf of the eligible minors without being considered as having applied for him/herself. However, if there is any other eligible adult of an unemancipated minor in the household, even though they would not normally be considered the household head, that eligible person should make application as the head of household.</p>		Anyone can file an application. Other sections specify who is eligible and how to determine eligibility for non-citizens as well as who are considered eligible household members.	
4.202.3(C)	Grammar correction.	C. The SSA office is required to prescreen all Food Assistance applications for entitlement to expedited service and shall mark "expedited processing" on the first page of all applications of households that appear to be entitled to such processing. The SSA will inform households which appear to meet the criteria for expedited service that benefits may be issued a few days sooner if the household applies directly at the local office. The household may take the application from the SSA office to local office for screening, interview and processing of the application. Each local office shall furnish the SSA office(s) serving its geographical area with a street map and/or map defining its boundaries together with the addresses of the certification offices in the project area.	C. The SSA office is required to prescreen all Food Assistance applications for entitlement to expedited service and shall mark "expedited processing" on the first page of all applications of households that appear to be entitled to such processing. The SSA will inform households which appear to meet the criteria for expedited service that benefits may be issued a few days sooner if the household applies directly at the local office. The household may take the application from the SSA office to local office for screening, interviewing, and processing of the application. Each local office shall furnish the SSA office(s) serving its geographical area with a street map and/or map defining its boundaries together with the addresses of the certification offices in the project area.	Updated "for screening, and interview, and processing of the application to "for screening, interviewing, and processing of the application".	
4.202.31	Updated language	<b>SSI Telephone Applications and Recertifications</b>	<b>SSI Telephone Applications and Recertifications</b>	Federal	



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
	to match federal regulation.	<p><b>Completed by the SSA</b></p> <p>A. If an SSA office takes an SSI application or redetermination on the telephone from a member of a pure SSI household, a Food Assistance application shall also be completed during the telephone interview. In these cases, the Food Assistance application shall be mailed by the SSA office to the applicant for signature for return to the SSA office or to the local office. The SSA office shall then forward any Food Assistance applications it receives to the local office. The local office shall not require the household to be interviewed again. The local office may contact the household further to obtain additional information for the eligibility determination in accordance with Section 4.204, E.</p> <p>B. The SSA office shall mail information of the client's right to file a Food Assistance application at the SSA office if they are members of a pure SSI household, or at their local office, and their right to an out-of-office Food Assistance interview to be performed by the county department if the household has a hardship condition as outlined in Section 4.204.1, "Waiver of Office Interview."</p> <p>C. For households consisting entirely of applicants for, or recipients of, SSI who apply for Food Assistance certification at an SSA office, the application shall be considered filed for normal processing purposes when the application is received by the SSA</p>	<p><b>Completed by the SSA</b></p> <p>If an SSA office takes an SSI application or redetermination on the telephone from a member of a pure SSI household, a Food Assistance application shall also be completed during the telephone interview and shall be mailed by the SSA office to the applicant for signature for return to the SSA office or to the local office. The SSA office shall then forward any Food Assistance applications it receives to the local office. The local office shall not require the household to be interviewed again. The local office may contact the household further to obtain additional information for the eligibility determination.</p> <p>B. The SSA office shall mail information of the client's right to file a Food Assistance application at the SSA office if they are members of a pure SSI household, or at their local office, and their right to an interview to be performed by the county department.</p> <p>C. For households consisting entirely of applicants for, or recipients of, SSI who apply for Food Assistance certification at an SSA office, the application shall be considered filed for normal processing purposes when the application is received by the SSA</p>	<p>regulations allow states the option to have telephone interviews as the primary method of interviewing households. Colorado has selected telephone interviews as the primary method of interviewing Food Assistance households.</p> <p>Neither a statewide nor a household waiver is required to complete a telephone interview.</p>	
4.202.32(C)	Duplicative reference.	C. The SSA office shall refer non-SSI households and those in which not all members have applied for or received SSI to the correct local office. The local office shall process those applications in accordance with the normal and expedited application processing procedures. Applications from such households shall be considered as filed on the date the signed application is taken at a local office in the correct		Exact language is included in 4.202.3, E	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		county.			
4.203	Duplicative reference.	<p><b>HEAD OF HOUSEHOLD AND AUTHORIZED REPRESENTATIVES</b></p> <p>Application for participation shall be made in the name of the household, by the head of the household, the spouse, another household member, or an authorized representative. Households wishing to participate in the Program must make this desire known through the application process and provide the certification office with enough information regarding household income and other eligibility factors to enable the certification worker to make a determination of eligibility. Refusal by the household to cooperate in providing the specifically stated information necessary for an eligibility determination, or withdrawal of application, is grounds for denial of the application. See Section 4.604, H.</p>	<p><b>HEAD OF HOUSEHOLD AND AUTHORIZED REPRESENTATIVES</b></p> <p>Application for participation shall be made in the name of the household, by the head of the household, the spouse, another household member, or an authorized representative.</p>	Removed language is included in 4.604.	
4.203.1	Clarified language.	<p><b>Designating a Head of Household</b></p> <p>A. The local office shall allow a household with adult parents and children, regardless of age or an adult with parental control over the children (less than eighteen years of age), to select an adult parent of children as its head when all adult members making application agree to the selection. The household may make this designation each time the household is certified for participation, but may not change the designation during a certification period unless there is a change in the composition of the household.</p> <p>B. Once an eligible household (household with an adult parent of children) selects its head, no further head of household designation may be imposed by the local office. If the household is not able to select its head of household, or an eligible household does not choose to select its head of household, the local office may make a reasonable determination of the head of household with an understanding that the</p>	<p><b>Designating a Head of Household</b></p> <p>A. The local office shall allow a household to select an adult parent of children (of any age) living in the household, or an adult who has parental control over children (under 18 years of age) living in the household, as the head of household provided that all adult members agree to the selection. The household may make this designation each time the household is certified for participation, but may not change the designation during a certification period unless there is a change in the composition of the household.</p> <p>B. The local office shall not use the head of household designation to impose special requirements on the household, such as require that the head of household, rather than another responsible member of the household, appear at the local office to make application for benefits. If the household is not able to select its head of household, or an eligible household does not choose to select its head of household, the local office</p>	Updated language around head of household to better reflect language in federal regulation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		head of household is usually the household member who has the most knowledge of the household's financial circumstances. Such individual must be a household member, except that, if the only adult in the Food Assistance household is a non-household member, such individual may make application on behalf of the household of minors as the authorized representative.	may make a reasonable determination of the head of household with an understanding that the head of household is usually the household member who has the most knowledge of the household's financial circumstances. Such individual must be a household member, except that, if the only adult in the Food Assistance household is a non-household member, such individual may make application on behalf of the household of minors as the authorized representative.		
4.203.2	Duplicative references.	<p>Designating Authorized Representatives</p> <p>A. The head of the household, spouse or any other responsible household member may designate in writing someone to act on behalf of the household to make an application, obtain an EBT card, and/or use the EBT card to purchase food for the household. In instances where a household is in need of an authorized representative but is unable to obtain one, the local office will assist such a household in finding an authorized representative. The certification office will assure that authorized representatives are properly designated; that is, the name of the authorized representative and the justification for appointing a person outside the household shall be maintained as part of the household's permanent case record.</p> <p>1. Making an Application</p> <p>When the head of the household or spouse cannot make an application for participation, another responsible household member may apply. An adult non-household member may act as the authorized representative. When designated in writing by the head of the household, spouse, or other responsible household member, the authorized representative must be a person who is sufficiently aware of relevant household</p>	<p>Designating Authorized Representatives</p> <p>A. The head of the household, spouse or any other responsible household member may designate in writing someone to act on behalf of the household to make an application, obtain an EBT card, and/or use the EBT card to purchase food for the household. In instances where a household is in need of an authorized representative but is unable to obtain one, the local office will assist such a household in finding an authorized representative. The certification office will assure that authorized representatives are properly designated; that is, the name of the authorized representative and the justification for appointing a person outside the household shall be maintained as part of the household's permanent case record.</p> <p>1. Making an Application</p> <p>The authorized representative must be a person who is sufficiently aware of relevant household circumstances. Whenever possible, the head of the household or spouse should prepare or review the application even though another household member or an authorized representative is the person interviewed.</p> <p>The local office shall inform the household that the household will be held liable for any over-issuance which results from erroneous</p>	Information is duplicative of head of household information in 4.203.1(B), residents of drug and alcohol treatment centers 4.309.31 and residents of group living arrangements in 4.309.41.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>circumstances. Whenever possible, the head of the household or spouse should prepare or review the application even though another household member or an authorized representative is the person interviewed.</p> <p>The local office shall inform the household that the household will be held liable for any over-issuance which results from erroneous information given by the authorized representative., except in the cases where the erroneous information is provided by an authorized representative of a drug and alcohol treatment center or group living facility. If a household member is found guilty of intentional program violation/fraud because of erroneous information given by an authorized representative, only the authorized representative will be held liable and not the household. Drug and alcohol treatment centers and group living facilities shall be responsible for any misrepresentation of intentional program violation/fraud which they knowingly commit in the certification of their residents.</p> <p>2.Obtaining an EBT Card</p> <p>An authorized representative may be designated to obtain an EBT card for the household at the time the household applies for participation. The authorized representative responsible for obtaining an EBT card may be the same individual designated to make application for the household or may be another individual. Even if a household member is able to make an application and obtain an EBT card, the household should be encouraged to name an</p>	<p>information given by the authorized representative.</p> <p>2.Obtaining an EBT Card</p> <p>An authorized representative may be designated to obtain an EBT card for the household at the time the household applies for participation. The authorized representative responsible for obtaining an EBT card may be the same individual designated to make application for the household or may be another individual. Even if a household member is able to make an application and obtain an EBT card, the household should be encouraged to name an authorized representative responsible for obtaining an EBT Card in case of illness or other circumstances which might result in an inability to obtain Food Assistance benefits.</p> <p>3. Using an EBT Card</p> <p>The authorized representative may use the household's EBT card to purchase food for the household's consumption provided the authorized representative is acting with the full knowledge and consent of the household.</p> <p>4. Restrictions</p> <p>An authorized representative may act on behalf of more than one household and limits shall not be placed on the number of households an authorized representative may represent, but such an arrangement should be approved only if there is a bona fide need. In determining such need, consideration shall be given to the proximity of the households to one another, the</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>authorized representative responsible for obtaining an EBT Card in case of illness or other circumstances which might result in an inability to obtain Food Assistance benefits.</p> <p>3. Using an EBT Card</p> <p>The authorized representative may use the household's EBT card to purchase food for the household's consumption provided the authorized representative is acting with the full knowledge and consent of the household.</p> <p>4. Restrictions</p> <p>An authorized representative may act on behalf of more than one household and limits shall not be placed on the number of households an authorized representative may represent, but such an arrangement should be approved only if there is a bona fide need. In determining such need, consideration shall be given to the proximity of the households to one another, the distance to the certification or issuance office, the availability of transportation, and the health of the household members involved.</p> <p>In the event employers, such as those that employ migrants, are designated as authorized representatives or that a single authorized representative has access to multiple EBT cards, the certification office should make certain that:</p> <p>a. The household has freely requested the assistance of the authorized representative;</p>	<p>distance to the certification or issuance office, the availability of transportation, and the health of the household members involved.</p> <p>In the event employers, such as those that employ migrants, are designated as authorized representatives or that a single authorized representative has access to multiple EBT cards, the certification office should make certain that:</p> <p>a. The household has freely requested the assistance of the authorized representative;</p> <p>b. The household's circumstances are correctly stated and the household is receiving the correct amount of benefits; and,</p> <p>c. The authorized representative is properly using the EBT card.</p> <p>B. In the event the only adult living with a household is classified as a non-household member, that individual may be the authorized representative for the minor household members.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>b. The household's circumstances are correctly stated and the household is receiving the correct amount of benefits; and,</p> <p>c. The authorized representative is properly using the EBT card.</p> <p>B. In the event the only adult living with a household is classified as a non-household member, that individual may be the authorized representative for the minor household members.</p> <p>C. Residents of drug or alcohol treatment centers shall participate in the Program through use of an authorized representative who shall be an employee of, and designated by, the private nonprofit organization. Drug or alcohol treatment centers shall receive and spend the Food Assistance benefits for food prepared by and served to the residents of the center who are participating in the Food Assistance Program.</p> <p>D. Residents of group living arrangements shall participate through an authorized representative employed and designated by the group living arrangement unless the group living arrangement determines the resident is capable of acting on his/her own behalf. The head of a group living arrangement which acts as the authorized representative for the residents may either receive and spend the residents' benefits for food that will be prepared by and served to each eligible resident or allow each resident to spend all or any portion of the benefits on his or her own behalf.</p>			
4.204(A)	Updated language to match federal regulation.	<b>Interviews</b>  A. Interview Requirements	<b>Interviews</b>  A. Interview Requirements	Federal regulation allows an interview in the home of a	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>All applicant households shall undergo a face-to-face or phone interview with a qualified eligibility worker prior to initial certification and at least once every twelve (12) months. A household certified for twenty-four (24) months is not required to complete an interview at the 12 month interim. The applicant may bring any person(s) he or she chooses to the interview. The individual interviewed may be the head of the household, spouse, or any other responsible member of the household, or an authorized representative. A face-to-face interview may be conducted at the county local office or a mutually acceptable location, including the household's residence. If the interview is to be conducted at the residence, it must be scheduled in advance. The interview shall be conducted as an official and confidential discussion of household circumstances. The applicant's right to privacy shall be protected during the interview. Facilities shall be adequate to preserve the privacy and confidentiality of the interview.</p> <p>The eligibility worker shall not simply review the information entered on the application, but shall explore and resolve with the household unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview, including the appropriate application processing standard and the household's responsibility to report changes. The interviewer must advise households which are applying for other public assistance programs that any time limits and other requirements for the receipt of other public assistance do not apply to the receipt of Food Assistance. Households may still qualify for Food Assistance if they have reached a time limit, begun working, or lost benefits from another program for another reason.</p> <p>Upon determination that a person should be referred</p>	<p>All applicant households shall undergo a face-to-face or phone interview with a qualified eligibility worker prior to initial certification and at least once every twelve (12) months. A household certified for twenty-four (24) months is not required to complete an interview at the 12 month interim. The applicant may include any person(s) he or she chooses for the interview. The individual interviewed may be the head of the household, spouse, or any other responsible member of the household, or an authorized representative. A face-to-face interview may be conducted at the county local office or a mutually acceptable location, including the household's residence upon household request. If the interview is to be conducted at the residence, it must be scheduled in advance. The interview shall be conducted as an official and confidential discussion of household circumstances. The applicant's right to privacy shall be protected during the interview. Facilities shall be adequate to preserve the privacy and confidentiality of the interview.</p> <p>The eligibility worker shall not simply review the information entered on the application, but shall explore and resolve with the household unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview, including the appropriate application processing standard and the household's responsibility to report changes. The interviewer must advise households which are applying for other public assistance programs that any time limits and other requirements for the receipt of other public assistance do not apply to the receipt of Food Assistance. Households may still qualify for Food Assistance if they have reached a time limit, begun working, or lost benefits from another program for another reason.</p> <p>Upon determination that a person should be referred to an Employment First Unit, the county department shall explain to the applicant the pertinent work requirements,</p>	household only when the household has requested an interview in their home. The home interview cannot be at the preference of the local office.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		to an Employment First Unit, the county department shall explain to the applicant the pertinent work requirements, the rights and responsibilities of work registered household members, and the consequences of failure to comply. The local office shall provide a written statement of these requirements to each work registrant in the household and to each previously exempt or new household member when that person becomes subject to the work registration and at recertification.	the rights and responsibilities of work registered household members, and the consequences of failure to comply. The local office shall provide a written statement of these requirements to each work registrant in the household and to each previously exempt or new household member when that person becomes subject to the work registration and at recertification.		
4.204.1	Removed language to match federal regulation.	<p><b>Waiver of Office Interview</b></p> <p>A. The household shall be notified that the face-to-face interview will be waived in favor of a telephone interview or home visit on a case-by-case basis because of a household hardship, as listed below in D, which may prevent the applicant from coming to the office.</p> <p>The local office shall conduct a telephone interview or a home visit in cases in which the office interview is waived. Home visits shall be scheduled in advance with the household. Waiver of the office interview does not exempt the household from the verification requirements, although special procedures may be used, and shall not affect the household's certification period. The local office shall document in the case record the reason that a requested waiver was granted or denied.</p> <p>B. The office interview shall be waived if requested by any household which is unable to appoint an authorized representative and which has no household members able to come to the local office because they are sixty (60) years of age or older, or have a mental or physical disability, or are residents of a shelter for battered women and children.</p> <p>C. The local office shall waive the office interview on a</p>		<p>Federal regulations allow states the option to have telephone interviews as the primary method of interviewing households. Colorado has selected telephone interviews as the primary method of interviewing Food Assistance households.</p> <p>Neither a statewide nor a household waiver is required to complete a telephone interview.</p>	



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>case-by-case basis for a household whenever desirable, including households that are unable to appoint an authorized representative and those households that do not contain A member capable of coming to the local office because of hardships. The local office shall document in the case file the reason that a requested waiver was granted or denied.</p> <p>D. Hardship conditions include, but are not limited to:</p> <ol style="list-style-type: none"> <li>1. Illness or the need to care for someone;</li> <li>2. Work schedule;</li> <li>3. Loss of pay or fear of loss of job;</li> <li>4. The household members are sixty (60) years of age or older;</li> <li>5. The household member is mentally or physically disabled;</li> <li>6. The household has an adult who has earned income;</li> <li>7. The household has an adult in school or training;</li> <li>8. The household resides in a rural area;</li> <li>9. Prolonged severe weather;</li> <li>10. Transportation difficulties, including if the household does not own a vehicle or does not have transportation available;</li> <li>11. Family violence or harassment or stalking;</li> </ol>			

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		12. Work hours or employment training hours; and,  13. Any other challenge which precludes an in-office interview			
4.205	Removed unnecessary cross-reference.	<p><b>Application Processing Standards</b></p> <p>All newly certified households, except those that are given expedited service, shall be given an opportunity to participate no later than thirty (30) calendar days following the date the application was filed. Households entitled to expedited service shall have benefits available no later than the seventh calendar day following the date of application. For application processing purposes, day “one” (1) is the first calendar day after the application is received by a local office in the correct county.</p> <p>If the local office does not determine a household's eligibility and provide an opportunity to participate within thirty (30) calendar days following the date the application was filed, the office shall determine whether the delay was caused by failure to act on the part of the household or on the part of the local office as outlined in Sections 4.205.3 through 4.205.4.</p> <p>For more information about authorizing and accessing benefits, refer to 4.207, “Authorizing Benefits.”</p>	<p><b>Application Processing Standards</b></p> <p>All newly certified households, except those that are given expedited service, shall be given an opportunity to participate no later than thirty (30) calendar days following the date the application was filed. Households entitled to expedited service shall have benefits available no later than the seventh calendar day following the date of application. For application processing purposes, day “one” (1) is the first calendar day after the application is received by a local office in the correct county.</p> <p>If the local office does not determine a household's eligibility and provide an opportunity to participate within thirty (30) calendar days following the date the application was filed, the office shall determine whether the delay was caused by failure to act on the part of the household or on the part of the local office as outlined in Sections 4.205.3 through 4.205.4.</p>	The citation to another section of the Food Assistance regulation is not necessary to understand the context of this citation.	
4.205.1	Removed language to match federal regulation.	<p><b>Processing Standards for Expedited Service</b></p> <p>A. The following households are entitled to expedited service:</p> <ol style="list-style-type: none"> <li>1. Migrant or seasonal farm worker households whose liquid resources do not exceed one hundred dollars (\$100) and who are destitute of income as defined in Section 4.406.</li> <li>2. Households whose liquid resources do not exceed one hundred dollars (\$100) and who</li> </ol>	<p><b>Processing Standards for Expedited Service</b></p> <p>A. The following households are entitled to expedited service:</p> <ol style="list-style-type: none"> <li>1. Migrant or seasonal farm worker households whose liquid resources do not exceed one hundred dollars (\$100) and who are destitute of income as defined in Section 4.406.</li> <li>2. Households whose liquid resources do not exceed one hundred dollars (\$100) and who reasonably expect to have less than one</li> </ol>	Federal regulations allow states the option to have telephone interviews as the primary method of interviewing households. Colorado has selected	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>reasonably expect to have less than one hundred fifty dollars (\$150) of gross monthly income in the calendar month of application.</p> <p>3. Eligible households whose combined monthly gross income and liquid resources are less than the household's anticipated monthly rent/mortgage and utilities. The appropriate utility standard, as defined in Section 4.407.31, shall be utilized when determining a household's utility costs.</p> <p>B. Households eligible for expedited service shall be able to access EBT benefits no later than the seventh (7th) calendar day following the date of application.</p> <p>1. If a household is entitled to expedited service the local office shall conduct the interview, unless the household cannot be reached, and complete the application process within seven (7) calendar days.</p> <p>2. Households entitled to expedited service shall complete an interview prior to any determination of eligibility. If a household fails to complete the required interview within seven (7) calendar days following the date the application for assistance was filed, the household is no longer entitled to expedited benefits by the seventh (7th) day following the date of application.</p> <p>3. In instances in which the household is entitled to expedited service and to a waiver of the office interview and a proxy cannot be secured to complete the application process, the county department shall make all reasonable efforts to send a staff member or volunteer to the household's residence to</p>	<p>hundred fifty dollars (\$150) of gross monthly income in the calendar month of application.</p> <p>3. Eligible households whose combined monthly gross income and liquid resources are less than the household's anticipated monthly rent/mortgage and utilities. The appropriate utility standard, as defined in Section 4.407.31, shall be utilized when determining a household's utility costs.</p> <p>B. Households eligible for expedited service shall be able to access EBT benefits no later than the seventh (7th) calendar day following the date of application.</p> <p>1. If a household is entitled to expedited service the local office shall conduct the interview, unless the household cannot be reached, and complete the application process within seven (7) calendar days.</p> <p>2. Households entitled to expedited service shall complete an interview prior to any determination of eligibility. If a household fails to complete the required interview within seven (7) calendar days following the date the application for assistance was filed, the household is no longer entitled to expedited benefits by the seventh (7th) day following the date of application.</p> <p>C. Households that apply for initial benefits after the fifteenth (15th) of the month under the expedited service procedures, which have completed the application and provided all verification within the expedited timeframe and have been determined eligible to receive benefits for the initial month and the subsequent month, shall receive the application month's prorated allotment and the next full month's allotment at the same time.</p>	<p>telephone interviews as the primary method of interviewing Food Assistance households.</p> <p>Neither a statewide nor a household waiver is required to complete a telephone interview.</p> <p>Applications submitted to SSA information is contained in 4.202.3.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>complete the application within the six (6) calendar-day period.</p> <p>C. Households that apply for initial benefits after the fifteenth (15th) of the month under the expedited service procedures, which have completed the application and provided all verification within the expedited timeframe and have been determined eligible to receive benefits for the initial month and the subsequent month, shall receive the application month's prorated allotment and the next full month's allotment at the same time.</p> <p>Households applying for initial benefits after the fifteenth (15th) of the month for which verification has been postponed shall have the second month's benefits and the prorated allotment available on the seventh (7th) calendar day. The household must provide all postponed verification before the third month's benefits can be issued.</p> <p>D. Households not initially screened as requiring expedited service, but subsequently determined to be entitled to such service, shall be entitled to the expedited processing timeframes from the date such a determination was made.</p> <p>E. In those instances where the application was completed at an SSA office, the expedited processing time standards shall begin on the date the local office received the Food Assistance application or the date that an individual was released from an institution if that household applied for SSI and Food Assistance prior to the release from an institution.</p> <p>F. If Program benefits are reduced, suspended, or cancelled in accordance with Section 4.904.4, households eligible for expedited service shall receive expedited service in accordance with the following</p>	<p>Households applying for initial benefits after the fifteenth (15th) of the month for which verification has been postponed shall have the second month's benefits and the prorated allotment available on the seventh (7th) calendar day. The household must provide all postponed verification before the third month's benefits can be issued.</p> <p>D. Households not initially screened as requiring expedited service, but subsequently determined to be entitled to such service, shall be entitled to the expedited processing timeframes from the date such a determination was made.</p> <p>E. If Program benefits are reduced, suspended, or cancelled in accordance with Section 4.904.4, households eligible for expedited service shall receive expedited service in accordance with the following procedures:</p> <ol style="list-style-type: none"> <li>1. Those households that receive expedited service in the month(s) in which reductions are in effect and are determined to be eligible shall be issued allotments that are reduced in accordance with the reduction in effect. These reduced allotments shall be made available to the households within the timeframes specified in this section.</li> <li>2. Those households that receive expedited service in month(s) in which suspensions are in effect and are determined to be eligible shall have benefits issued to them within the timeframes specified in this section. However, if the suspension is still in effect at the time issuance is to be made, the issuance shall be postponed until the suspension is ended.</li> </ol>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>procedures:</p> <ol style="list-style-type: none"> <li>1. Those households that receive expedited service in the month(s) in which reductions are in effect and are determined to be eligible shall be issued allotments that are reduced in accordance with the reduction in effect. These reduced allotments shall be made available to the households within the timeframes specified in this section.</li> <li>2. Those households that receive expedited service in month(s) in which suspensions are in effect and are determined to be eligible shall have benefits issued to them within the timeframes specified in this section. However, if the suspension is still in effect at the time issuance is to be made, the issuance shall be postponed until the suspension is ended.</li> <li>3. Households eligible to receive expedited processing and who apply for Program benefits during months in which cancellations are in effect shall receive expedited service. However, the deadline for completing the processing of such cases shall be five (5) calendar days or the end of the month of application, whichever date is later. All other rules pertaining to expedited service contained in this section shall be applicable to these cases.</li> </ol>	<p>3. Households eligible to receive expedited processing and who apply for Program benefits during months in which cancellations are in effect shall receive expedited service. However, the deadline for completing the processing of such cases shall be five (5) calendar days or the end of the month of application, whichever date is later. All other rules pertaining to expedited service contained in this section shall be applicable to these cases.</p>		
4.205.11	Removed unnecessary cross-reference.	<p><b>Special Provisions for Expedite Service</b></p> <p>A. Households requesting, but not entitled to, expedited service shall have their applications processed according to normal processing standards as outlined in Section 4.205.2.</p>	<p><b>Special Provisions for Expedite Service</b></p> <p>A. Households requesting, but not entitled to, expedited service shall have their applications processed according to normal processing standards.</p> <p>B. The local office shall use the following procedures for</p>	The citation to another section of the Food Assistance regulation is not necessary to understand the	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>B. The local office shall use the following procedures for expediting service:</p> <ol style="list-style-type: none"> <li>1. Prior to certification, the identity of the applicant shall be verified. through a collateral contact, electronic information provided by the Colorado Department of Revenue, Division of Motor Vehicles (DMV) or by readily available documentary evidence.</li> <li>2. Refer to Section 4.505.1 for acceptable sources of identification verification.</li> <li>3. Prior to certification of expedited benefits, all reasonable efforts shall be made to verify residency, income, or lack thereof, and other factors required in Section 4.502 "through collateral contacts or readily available documentary evidence. However, verification shall be postponed if it cannot be obtained in sufficient time to meet the expedited processing standards. If verification required in Section 4.502 or verification of questionable information is postponed, the household shall be certified for expedited benefits, if determined eligible, for the month of application or, for those households applying after the fifteenth (15th) of the month, the month of application and the subsequent month.</li> </ol>	<p>expediting service:</p> <ol style="list-style-type: none"> <li>1. Prior to certification, the identity of the applicant shall be verified.</li> <li>2. Prior to certification of expedited benefits, all reasonable efforts shall be made to verify residency, income, or lack thereof, and other factors of eligibility. However, verification shall be postponed if it cannot be obtained in sufficient time to meet the expedited processing standards. If verification is postponed, the household shall be certified for expedited benefits, if determined eligible, for the month of application or, for those households applying after the fifteenth (15th) of the month, the month of application and the subsequent month.</li> </ol>	context of this citation.	
4.205.2	Removed duplicative references and added clarifying language to align with federal regulation.	<p><b>Normal Processing Standards</b></p> <p>A. The county local office shall process applications as expeditiously as possible and provide eligible households a written notification of their eligibility. The applicant household must receive a Notice of Action form, which will indicate the household's period of eligibility and Food Assistance allotment. Eligible</p>	<p><b>Normal Processing Standards</b></p> <p>A. The county local office shall process applications as expeditiously as possible and provide eligible households a written notification of their eligibility. The applicant household must receive a Notice of Action form, which will indicate the household's period of eligibility and Food Assistance allotment. Eligible</p>	<p>Applications submitted to SSA information is contained in 4.202.3.</p> <p>Updated language around</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>households shall be provided an opportunity to obtain benefits as soon as possible, but no later than thirty (30) calendar days following the date the application was filed. Except for applications filed at an SSA office, an application shall be considered filed the day a local office in the correct county receives a signed application containing the applicant's name, address, and signature.</p> <p>Households found to be ineligible shall be sent a Notice of Action form denying the household as soon as possible, but no later than thirty (30) calendar days following the date the application was filed. Applicant households that refuse to cooperate in completing the application process shall be denied at the time of refusal. For a determination of refusal to be made, the household must refuse to take actions that are required to complete the application process.</p> <p>B. In cases where verification is incomplete, the local office shall provide the household with a statement of required verification on the state-prescribed notice form and offer to assist the household in obtaining the required verification. The office shall allow the household ten (10) calendar days to provide the missing verifications, unless the household missed the first appointment. If the household misses the first appointment and the interview cannot otherwise be rescheduled until after the twentieth (20th) day but before the thirtieth (30th) day following the date the application was filed, the household must appear for the interview, bring verification, and register members for work by the thirtieth (30th) day. A household can be found ineligible or eligible for the month of application and for the following month based on one (1) application, if sufficient information for such determination is available. The state-prescribed notice form shall reflect specific months of eligibility and ineligibility.</p>	<p>households shall be provided an opportunity to obtain benefits as soon as possible, but no later than thirty (30) calendar days following the date the application was filed. Except for applications filed at an SSA office, an application shall be considered filed the day a local office in the correct county receives a valid application containing the applicant's name, address, and signature.</p> <p>Households found to be ineligible shall be sent a Notice of Action form denying the household as soon as possible, but no later than thirty (30) calendar days following the date the application was filed. Applicant households that refuse to cooperate in completing the application process shall be denied at the time of refusal. For a determination of refusal to be made, the household must be able to cooperate, but clearly refuse to take actions that are required to complete the application process.</p> <p>B. In cases where verification is incomplete, the local office shall provide the household with a statement of required verification on the state-prescribed notice form and offer to assist the household in obtaining the required verification. The office shall allow the household ten (10) calendar days to provide the missing verifications, unless the household missed the first appointment. If the household misses the first appointment and the interview cannot otherwise be rescheduled until after the twentieth (20th) day but before the thirtieth (30th) day following the date the application was filed, the household must appear for the interview, bring verification, and register members for work by the thirtieth (30th) day. A household can be found ineligible or eligible for the month of application and for the following month based on one (1) application, if sufficient information for such determination is available. The state-prescribed notice form shall reflect specific months of eligibility and ineligibility.</p>	<p>a household's refusal to cooperate to note the household must be able to cooperate but clearly refuse to cooperate in the application process prior to a denial of the application.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>C. Applications are valid for a period of sixty (60) calendar days. Households reapplying for benefits following a determination of ineligibility more than sixty (60) calendar days from the date of the original application must submit a new application.</p> <p>D. In those instances where the application was completed at an SSA office, the local office shall make an eligibility determination and issue Food Assistance benefits to eligible SSI households within thirty (30) calendar days following the date the application was received by the SSA. Applications shall be considered filed for normal processing purposes when the signed application is received by SSA.</p>	<p>C. Applications are valid for a period of sixty (60) calendar days. Households reapplying for benefits following a determination of ineligibility more than sixty (60) calendar days from the date of the original application must submit a new application.</p>		
4.205.4	Duplicative reference.	<p><b>Delays in Processing Beyond Sixty (60) Days</b></p> <p>A. If the local office is at fault for not completing the application process by the end of the second thirty (30) day period, and the case record is otherwise complete, the office shall continue to process the original application until an eligibility determination is made. If the household is found to be eligible, and the local office was also at fault for the delay in the initial thirty (30) days, benefits retroactive to the month of application shall be provided to the household. However, if the delay during the initial thirty days was the household's fault, benefits shall only be provided back to the month following the month of application (see Section 4.207.2).</p> <p>B. If the local office is at fault for not completing the application by the end of the second thirty (30) day period, but the case record is insufficiently complete to make an eligibility determination, the office shall deny the case and request the household to file a new application, if desired.</p> <p>C. If found eligible during the sixty (60) calendar-day</p>	<p><b>Delays in Processing Beyond Sixty (60) Days</b></p> <p>A. If the local office is at fault for not completing the application process by the end of the second thirty (30) day period, and the case record is otherwise complete, the office shall continue to process the original application until an eligibility determination is made. If the household is found to be eligible, and the local office was also at fault for the delay in the initial thirty (30) days, benefits retroactive to the month of application shall be provided to the household. However, if the delay during the initial thirty days was the household's fault, benefits shall only be provided back to the month following the month of application (see Section 4.207.2).</p> <p>B. If the local office is at fault for not completing the application by the end of the second thirty (30) day period, but the case record is insufficiently complete to make an eligibility determination, the office shall deny the case and request the household to file a new application, if desired.</p> <p>C. If the household is at fault for not completing the application process by the end of the second thirty (30)</p>	Information on delays in processing during the 60-days is included in 4.205.31 and 4.205.32.	



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>period, benefits to the household would be calculated from the month of application, provided the local office was also at fault for the delay in the initial thirty (30) day period. Benefits would be calculated from the month following the month of application if the household was at fault for the initial delay. The benefits would be prorated if action was taken after the thirty day time frame but still within the second month. If the household is at fault and action is not taken until the third calendar month following the month of application, the benefits will be provided only for the third calendar month. If the action is taken after the 1st day in the third calendar month but within the sixty day period, the benefits will be prorated from the date the household takes the required action for the third month.</p> <p>D. If the household is at fault for not completing the application process by the end of the second thirty (30) day period, the application shall be denied and a new application required if the household wishes to participate. The household shall not be entitled to any lost benefits even if the delay in the initial thirty day period was the fault of the local office.</p>	<p>day period, the application shall be denied and a new application required if the household wishes to participate. The household shall not be entitled to any lost benefits even if the delay in the initial thirty day period was the fault of the local office.</p>		
4.206(C)(1)(b)	Removed unnecessary cross-reference.	<p>b. Households eligible under basic categorical eligibility have been deemed to have met the income and resource requirements of the program that confers eligibility; therefore, no further verification is required beyond that gathered by the program that confers eligibility. However, the agency must collect and verify eligibility factors in accordance with Sections 4.300 and 4.502. if these factors are not already collected and verified by the other program, are considered questionable, or are unavailable to the Food Assistance Program. This includes:</p> <p>1) Net income;</p> <p>2 )Gross income;</p>	<p>b. Households eligible under basic categorical eligibility have been deemed to have met the income and resource requirements of the program that confers eligibility; therefore, no further verification is required beyond that gathered by the program that confers eligibility. However, the agency must collect and verify eligibility factors if these factors are not already collected and verified by the other program, are considered questionable, or are unavailable to the Food Assistance Program. This includes:</p> <p>1) Net income;</p> <p>2) Gross income;</p>	The citation to another section of the Food Assistance regulation is not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		3) Resources; 4) Residency; 5) Social Security Number; 6) Sponsored non-citizen information.	3) Resources; 4) Residency; 5) Social Security Number; 6) Sponsored non-citizen information.		
4.206(C)(2)(b)	Removed unnecessary cross-reference.	b. Households eligible under expanded categorical eligibility have been deemed to have met the income and resource requirements of the program that confers eligibility; therefore, no further verification is required beyond that gathered by the program that confers eligibility. However, the agency must collect and verify eligibility factors in accordance with Sections 4.300 and 4.502, if these factors are not already collected and verified by the other program, are considered questionable, or are unavailable to the Food Assistance Program. This includes:  1) Net income; 2) Gross income; 3) Resources; 4) Residency; 5) Social Security Number; 6) Sponsored non-citizen information.	b. Households eligible under expanded categorical eligibility have been deemed to have met the income and resource requirements of the program that confers eligibility; therefore, no further verification is required beyond that gathered by the program that confers eligibility. However, the agency must collect and verify eligibility factors if these factors are not already collected and verified by the other program, are considered questionable, or are unavailable to the Food Assistance Program. This includes:  1) Net income; 2) Gross income; 3) Resources; 4) Residency; 5) Social Security Number; 6) Sponsored non-citizen information.	The citation to another section of the Food Assistance regulation is not necessary to understand the context of this citation.	
4.206(C)(3)(b)	Removed reference to eliminated citation.	b. Households having their eligibility reviewed under standard eligibility rules must meet the following criteria:  1) Households that include a member who is elderly or a person with a disability as defined in Section 4.304.41,C must have a combined net income, after all applicable deductions, at	b. Households having their eligibility reviewed under standard eligibility rules must meet the following criteria:  1) Households that include a member who is elderly or a person with a disability must have a combined net income, after all applicable deductions, at or below one hundred percent (100%) of the federal poverty level. The	Disability is now contained within definitions and not in a separate citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>or below one hundred percent (100%) of the federal poverty level. The household must have resources below the limit prescribed in Section 4.408.</p> <p>2) Households that do not include a member who is elderly or a person with a disability as defined in Section 4.304.41,C must have a combined gross income at or below one hundred thirty percent (130%) of the federal poverty level. After all applicable deductions, the household's net income must be at or below one hundred percent (100%) of the federal poverty level. The household must have resources below the limit prescribed in Section 4.408.</p> <p>3) Households must also meet nonfinancial eligibility criteria set out in Section 4.300.</p>	<p>household must have resources below the limit prescribed in Section 4.408.</p> <p>2) Households that do not include a member who is elderly or a person with a disability must have a combined gross income at or below one hundred thirty percent (130%) of the federal poverty level. After all applicable deductions, the household's net income must be at or below one hundred percent (100%) of the federal poverty level. The household must have resources below the limit prescribed in Section 4.408.</p> <p>3) Households must also meet nonfinancial eligibility criteria set out in Section 4.300.</p>		
4.208	Removed unnecessary cross references, duplicative, and outdated references.	<p><b>CERTIFICATION PERIODS</b></p> <p>A. Certification periods shall conform to calendar months. Households shall be assigned the longest certification period possible based on the predictability of the household's anticipated income and other circumstances. At the expiration of each certification period, entitlement to Food Assistance benefits ends. Further eligibility shall only be established on a newly completed application for redetermination, an interview if one has not been completed within the last twelve months, except for households certified for twenty-four months, and verification as required by Section 4.502. Under no circumstances shall benefits be continued beyond the end of a certification period without a new determination of eligibility. The State-prescribed Notice of Action form provided to the applicant household shall indicate the period of certification if the household is determined to be eligible for benefits.</p>	<p><b>CERTIFICATION PERIODS</b></p> <p>A. Certification periods shall conform to calendar months. Households shall be assigned the longest certification period possible based on the predictability of the household's anticipated income and other circumstances. At the expiration of each certification period, entitlement to Food Assistance benefits ends. Further eligibility shall only be established on a newly completed application for redetermination. Under no circumstances shall benefits be continued beyond the end of a certification period without a new determination of eligibility. The State-prescribed Notice of Action form provided to the applicant household shall indicate the period of certification if the household is determined to be eligible for benefits.</p> <p>B. Upon approval at the time of recertification, a household need not be assigned the same certification period as formerly, but should be assigned a period of</p>	<p>The citations to other sections of the Food Assistance regulation is not necessary to understand the context of this citation.</p> <p>Removed references to Change Reporting, which is no longer a reporting category as all Food Assistance households are Simplified</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>B. The eligibility worker shall use the guidelines given in Section 4.208.1 in determining the appropriate period of eligibility. Upon approval at the time of recertification, a household need not be assigned the same certification period as formerly, but should be assigned a period of time based on a new review of the household's circumstances.</p> <p>C. Certification periods may not be shortened for households unless the agency receives verified information prior to certification that the household will become ineligible for Food Assistance benefits during the certification period.</p> <p>D. At the time of certification, the local office shall notify the household of what changes the household is required to report during the certification period. The household shall also be notified that those changes which are required to be reported during the certification period as specified in Section 4.603 must be reported to the local office no later than the tenth (10th) of the month following the month in which the change occurred. A household shall report changes in person, by phone, mail, fax, or other electronic device.</p> <p>E. A delinquent PA redetermination shall not delay the Food Assistance recertification beyond the date of the household's Food Assistance certification period ending date. The household must be sent a Notice of Expiration form in accordance with Section 4.209.</p>	<p>time based on a new review of the household's circumstances.</p> <p>C. A delinquent PA redetermination shall not delay the Food Assistance recertification beyond the date of the household's Food Assistance certification period ending date.</p>	Reporting. Information on what is required to be reported is in 4.603.	
4.208.1	Removed duplicative and outdated references.	<p><b>Certification Period Guidelines [Rev. eff. 4/1/16]</b></p> <p>Households will be assigned a three six (6)-month or twenty-four (24) month certification period as follows:</p> <p>A. Twenty-Four (24) Month Certification Period</p> <p>1. A twenty-four month certification period</p>	<p><b>Certification Period Guidelines [Rev. eff. 4/1/16]</b></p> <p>Households will be assigned a six (6)-month or twenty-four (24) month certification period as follows:</p> <p>A. Twenty-Four (24) Month Certification Period</p> <p>1. A twenty-four month certification period shall</p>	<p>There are no longer three month certification periods.</p> <p>The reporting</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>shall be assigned to households that contain only members who are elderly and/or have a disability and have no earned income, as defined in Section 4.403 at the time of certification.</p> <p>2. Households certified with a twenty-four month certification period are considered a simplified reporting household and, as such, are required to report changes in accordance with Section 4.603.</p> <p>3. Households that are assigned a twenty-four month certification period must complete a periodic report form at the twelfth (12th) month interval to report any changes that have occurred or to report that no changes have occurred since the most recent certification. The form shall be returned or the case will be closed following the notice of adverse action period. The notice will state the reason for ending the certification period and that the certification period will end following the adverse action period.</p> <p>B. Six (6) Month Certification Period</p> <p>1. A household not assigned a twenty-four month certification period as outlined in subsection A of this section shall be assigned a six month certification period.</p> <p>2. Households assigned a six month certification period are considered a simplified reporting household and, as such, are required to report changes in accordance with Section 4.603.</p>	<p>be assigned to households that contain only members who are elderly and/or have a disability and have no earned income, as defined in Section 4.403 at the time of certification.</p> <p>2. Households that are assigned a twenty-four month certification period must complete a periodic report form at the twelfth (12th) month interval to report any changes that have occurred or to report that no changes have occurred since the most recent certification. The form shall be returned or the case will be closed following the notice of adverse action period. The notice will state the reason for ending the certification period and that the certification period will end following the adverse action period.</p> <p>B. Six (6) Month Certification Period</p> <p>1. A household not assigned a twenty-four month certification period as outlined in subsection A of this section shall be assigned a six month certification period.</p>	<p>requirements of Simplified Reporting are contained in 4.603.</p>	
4.209	Removed duplicative and	<b>RECERTIFICATION PROCESS REQUIREMENTS</b>	<b>RECERTIFICATION PROCESS REQUIREMENTS</b>	The information needed on the	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
	outdated references and added clarifying language to better align with federal regulation.	<p>A. In order to enable timely receipt of an application for recertification, the local office shall provide each household with a notice that its certification is about to expire. Benefits will not be continued beyond the end of the certification period unless the household is recertified.</p> <p>A notice of expiration, as prescribed by the State Department, shall be used by offices to advise households that their certification period is ending and that a new application must be filed. The notice of expiration form shall contain at a minimum:</p> <ol style="list-style-type: none"> <li>1. The ending date of the current certification and the consequences of failing to comply with the notice of expiration;</li> <li>2. The telephone number the household must call to schedule an interview;</li> <li>3. The office location;</li> <li>4. Notice that the household must attend any scheduled interview on or after the date the application is timely filed;</li> <li>5. The date the application must be received by the local office in order to avoid a break in the normal issuance cycle;</li> <li>6. Notice that the household is responsible for: <ol style="list-style-type: none"> <li>a. Completing the processing steps of the interview;</li> <li>b. Rescheduling any missed interview; and,</li> </ol> </li> </ol>	<p>A. In order to enable timely receipt of an application for recertification, the local office shall provide each household with a notice that its certification is about to expire. Benefits will not be continued beyond the end of the certification period unless the household is recertified.</p> <p>A notice of expiration, as prescribed by the State Department, shall be used by offices to advise households that their certification period is ending and that a new application must be filed.</p> <p>B. A household shall receive the notice of expiration not less than thirty (30) calendar days and not more than sixty (60) calendar days prior to expiration of its current certification period. If mailed, the notice shall be sent for the same timely receipt, allowing two (2) extra days for delivery delay.</p> <p>All households that file on or before the fifteenth (15th) of the last month of their certification period will have timely reapplied. Notices which are mailed must specify a date that allows at least two (2) days mail time and still gives the household fifteen (15) calendar days to respond. Households that submit an application for recertification by the date specified on their notice of expiration shall be considered to have timely reapplied to prevent an interruption in Food Assistance benefits.</p> <p>C. The local office shall conduct an interview with an adult member of the household or its authorized representative a minimum of once every twelve (12) months for households certified for six (6) months or less. The local office may choose not to interview the household at each recertification provided the household has completed an interview within the previous twelve (12) months.</p> <p>The local office shall schedule the interview so that the</p>	<p>Notice of Expiration is included in federal regulation. The Notice is prescribed by the State Department so the federal requirement is sufficient.</p> <p>An individual waiver of a face to face interview is no longer required.</p> <p>A Notice of Missed interview is required but the ability to include the denial notice with the Notice of missed interview is optional.</p> <p>The citation to another section of the Food Assistance regulation is not necessary to understand the context of this citation.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>c. Providing all required verification in order to receive uninterrupted benefits.</p> <p>7. That the household has ten (10) calendar days to submit missing verification after such verification is requested;</p> <p>8. The right to request an application and have the application accepted as long as it is signed by a responsible household member or authorized representative and contains a legible name and address;</p> <p>9. The household's right to file the application by mail, through an authorized representative, electronically, by facsimile, or in person;</p> <p>10. A statement of the household's right to request a fair hearing; and,</p> <p>A statement that SSI households may reapply at the Social Security office instead of the local office.</p> <p>B. A household unable to come into the certification office shall be advised of options available, such as the use of an authorized representative or mailing of an application with subsequent telephone interview or home certification. In the case of a household consisting entirely of SSI participants, a face-to-face interview shall be waived in accordance with Section 4.204.1.</p> <p>C. A household shall receive the notice of expiration not less than thirty (30) calendar days and not more than sixty (60) calendar days prior to expiration of its current certification period. If mailed, the notice shall</p>	<p>household has at least ten (10) calendar days to provide verification before the certification period ends. If an interview is required and the household fails to attend the scheduled interview, the local office must mail the household a notice of missed interview and may include a notice of denial at the same time.</p> <p>The local office may schedule an interview prior to the last month of the certification period or prior to the date the application is timely filed, but the household cannot be denied for failing or refusing to appear for such an interview. Rather, the local office shall send notice to the household in order to reschedule an appointment for an interview on or after the date the application is timely filed.</p> <p>D. The recertification process must elicit from the household sufficient information that, when combined with information in the case record, will ensure an accurate determination of eligibility. The local office shall provide the household with a notice of required verification and the date by which the verification must be provided.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>be sent for the same timely receipt, allowing two (2) extra days for delivery delay.</p> <p>All households that file on or before the fifteenth (15th) of the last month of their certification period will have timely reapplied. Notices which are mailed must specify a date that allows at least two (2) days mail time and still gives the household fifteen (15) calendar days to respond. Households that submit an application for recertification by the date specified on their notice of expiration shall be considered to have timely reapplied to prevent an interruption in Food Assistance benefits.</p> <p>D. The local office shall conduct an interview with an adult member of the household or its authorized representative a minimum of once every twelve (12) months for households certified for six (6) months or less. The local office may choose not to interview the household at each recertification provided the household has completed an interview within the previous twelve (12) months.</p> <p>The local office shall schedule the interview so that the household has at least ten (10) calendar days to provide verification before the certification period ends. If an interview is required and the household fails to attend the scheduled interview, the local office can mail the household a notice of missed interview and a notice of denial at the same time.</p> <p>The local office may schedule an interview prior to the last month of the certification period or prior to the date the application is timely filed, but the household cannot be denied for failing or refusing to appear for such an interview. Rather, the local office shall send notice to the household in order to reschedule an appointment for an interview on or after the date the application is timely filed.</p>			



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		E. The recertification process must elicit from the household sufficient information that, when combined with information in the case record, will ensure an accurate determination of eligibility. Information from the household shall be verified in accordance with Section 4.500. The local office shall provide the household with a notice of required verification and the date by which the verification must be provided.			
4.209.11	Duplicative reference.	<b>SSI and Food Assistance Joint Processing</b>  SSI/Food Assistance jointly-processed households which have received a Food Assistance Notice of Expiration shall be entitled to make a timely application for Food Assistance recertification at the SSA office as specified below:  A. In SSA offices where Section 4.202.33 is in effect, the outstationed worker shall accept the application and interview the participant, and the local office shall process the application.  B. In SSA offices where Section 4.202.33 is not in effect, SSA shall accept the application of a pure SSI household and forward the completed application and any available verification to the designated local office. Where SSA accepts and refers the application in such situations, the household shall not be required to appear at a second office interview, although the local office may contact the client to clarify any questionable information if necessary.		Applications submitted to SSA information is contained in 4.202.3.	
4.301	Removed duplicative and outdated references and added clarifying language to better align with federal regulation.	<b>IDENTITY OF APPLICANT</b>  The identity of the person submitting an application shall be verified. When an authorized representative applies on behalf of a household, the identity of both the authorized representative and the head of household shall be verified. Identity shall also be verified as a condition of expedited service (see	<b>IDENTITY OF APPLICANT</b>  The identity of the person submitting an application shall be verified either through interfaces, collateral contact, or client provided verification. When an authorized representative applies on behalf of a household, the identity of both the authorized representative and the head of household shall be verified.	Clarified in citation how identity can be verified.  The citation to another section of the Food	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		Section 4.502, A, 1). See Section 4.505.1 for acceptable sources of identity verification.		Assistance regulation is not necessary to understand the context of this citation.	
4.302(A)	Removed unnecessary cross references and duplicative references.	<p><b>SOCIAL SECURITY NUMBER REQUIREMENT</b></p> <p>General Requirements</p> <p>1. As a condition of Food Assistance eligibility, each member of a household participating in or applying for participation in the Food Assistance Program shall provide a Social Security Number (SSN), or proof that an application for a Social Security Number has been submitted to the Social Security Administration. The local office shall not require any household member to submit a Social Security card or other official documents as a means of verifying a Social Security Number. Household members who provide a SSN shall not be denied benefits for failure or inability to present a Social Security card or other official documentation. If individuals have more than one Social Security Number, all numbers shall be required.</p> <p>2. The local office shall explain that a member is not required to provide a Social Security Number (SSN), but the failure to provide one shall result in disqualification of the individual(s) for whom the number is not provided. The member who does not provide a SSN shall still be required to provide other eligibility information such as income and resources that will affect eligibility of other members. The local office shall advise individuals that any SSN that is provided voluntarily will be used in the same manner as SSNs of eligible household members. The SSNs will be matched against federal and state databases to verify information. SSNs will be used for the initial application matching for duplicate participation.</p>	<p><b>SOCIAL SECURITY NUMBER REQUIREMENT</b></p> <p>General Requirements</p> <p>1. As a condition of Food Assistance eligibility, each member of a household participating in or applying for participation in the Food Assistance Program shall provide a Social Security Number (SSN), or proof that an application for a Social Security Number has been submitted to the Social Security Administration. The local office shall not require any household member to submit a Social Security card or other official documents as a means of verifying a Social Security Number. Household members who provide a SSN shall not be denied benefits for failure or inability to present a Social Security card or other official documentation. If individuals have more than one Social Security Number, all numbers shall be required.</p> <p>2. The local office shall explain that a member is not required to provide a Social Security Number (SSN), but the failure to provide one shall result in disqualification of the individual(s) for whom the number is not provided. The member who does not provide a SSN shall still be required to provide other eligibility information such as income and resources that will affect eligibility of other members. The local office shall advise individuals that any SSN that is provided voluntarily will be used in the same manner as SSNs of eligible household members. The SSNs will be matched against federal and state databases to verify information. SSNs will be used for the initial application matching for duplicate participation.</p>	<p>Information on Social Security Numbers for newborns is in 4.302(B).</p> <p>The citation to another section of the Food Assistance regulation is not necessary to understand the context of this citation.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>3. If the household is being certified under the expedited service provisions, it shall provide a SSN or application for SSN for each person in the household, except for a newborn child, before the first (1st) full month of participation.</p> <p>4. If the household member required to provide a SSN either refuses to supply his/her SSN at the time of application or fails to provide the local office with a form or letter as proof of application for a SSN without good cause, he or she shall be ineligible to participate in the Food Assistance Program. The disqualification applies to the individual(s) who refused to cooperate with the application process to obtain the SSN and not the entire household. See Section 4.411.1 for how income and resources of the disqualified individual are counted toward the household. The household member(s) disqualified may become eligible by providing the local office with a Social Security Number, or by providing verification that that an application for a SSN has been submitted to the SSA.</p>	<p>3. If the household member required to provide a SSN either refuses to supply his/her SSN at the time of application or fails to provide the local office with a form or letter as proof of application for a SSN without good cause, he or she shall be ineligible to participate in the Food Assistance Program. The disqualification applies to the individual(s) who refused to cooperate with the application process to obtain the SSN and not the entire household. The household member(s) disqualified may become eligible by providing the local office with a Social Security Number, or by providing verification that an application for a SSN has been submitted to the SSA.</p>		
4.302(B)	Grammar correction.	<p>B. Individuals and Newborns Without a Social Security Number</p> <p>1. Those household members who do not have the required Social Security Number(s) shall obtain proof of application for a SSN prior to being certified as a member of the household, unless the member is a newborn child. The applicant/recipient shall be instructed to obtain from the SSA proof that he or she has completed an application for a Social Security Number and that the SSA has received that application. A specifically addressed letter from the SSA verifying that application for a SSN has been made is also acceptable proof of application for a Social Security Number. The applicant/recipient shall be instructed to return the completed form as soon as possible to the eligibility worker. A copy of the form</p>	<p>B. Individuals and Newborns Without a Social Security Number</p> <p>1. Those household members who do not have the required Social Security Number(s) shall obtain proof of application for a SSN prior to being certified as a member of the household, unless the member is a newborn child. The applicant/recipient shall be instructed to obtain from the SSA proof that he or she has completed an application for a Social Security Number and that the SSA has received that application. A specifically addressed letter from the SSA verifying that application for a SSN has been made is also acceptable proof of application for a Social Security Number. The applicant/recipient shall be instructed to return the completed form as soon as possible to the eligibility worker. A copy of the form shall be maintained in the</p>	Paragraph (B)(1) (b) members are required was missing "are".	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>shall be maintained in the case record.</p> <p>a. If the household is unable to provide proof of application for an SSN for a newborn, the household shall provide the SSN or proof of application at its next recertification within six (6) months following the baby's birth. The local office shall determine if the good cause provisions are applicable at the recertification.</p> <p>b. If a participating household's benefits are reduced or terminated within the certification period because one or more of its members required to provide a SSN is disqualified for failure to meet the SSN requirement, the local office shall issue a Notice of Adverse Action form. The notice shall inform the household that the non-cooperating individual(s) without a SSN is being disqualified, and show the current eligibility and benefit level of the remaining members, as well as a statement that the disqualified member(s) may end disqualification by providing a Social Security number.</p>	<p>case record.</p> <p>a. If the household is unable to provide proof of application for an SSN for a newborn, the household shall provide the SSN or proof of application at its next recertification within six (6) months following the baby's birth. The local office shall determine if the good cause provisions are applicable at the recertification.</p> <p>b. If a participating household's benefits are reduced or terminated within the certification period because one or more of its members are required to provide a SSN is disqualified for failure to meet the SSN requirement, the local office shall issue a Notice of Adverse Action form. The notice shall inform the household that the non-cooperating individual(s) without a SSN is being disqualified, and show the current eligibility and benefit level of the remaining members, as well as a statement that the disqualified member(s) may end disqualification by providing a Social Security number.</p>		
4.302(D)	Removed unnecessary cross reference.	<p>D. Verification</p> <p>See Section 4.505.2 regarding how to verify a SSN.</p>		The citation to another section of the Food Assistance regulation is not necessary to understand the context of this citation.	
4.303	Removed unnecessary cross references.	<p><b>RESIDENCY REQUIREMENT</b></p> <p>A. Applicants shall live in the county or district in which they make application for the Program unless the local office has made arrangements to allow</p>	<p><b>RESIDENCY REQUIREMENT</b></p> <p>A. Applicants shall live in the county or district in which they make application for the Program unless the local office has made arrangements to allow particular</p>	The citations to other sections of the Food Assistance regulation are	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>particular households to file an application in a nearby specified county/district office.</p> <p>B. Individuals may not participate in more than one household in any one (1) month unless they are a resident of a shelter for battered women and children, nor may a household participate in more than one (1) county or district in any month unless all household members are residents of a shelter for battered women and children.</p> <p>Households on Indian reservations participating in the Commodity Food Distribution Program for a particular period shall not be allowed to participate in the Food Assistance Program during the same period. Participation shall be limited to participation in the Commodity Program or the Food Assistance Program.</p> <p>C. Applicants who maintain a residence in the county or district for any purpose other than a vacation, regardless of the length of time they have resided in the county or district, shall be considered eligible for the Program, provided other eligibility requirements are met.</p> <p>D. Applicants who reside in a county, without residing in a permanent dwelling nor having a fixed mailing address, shall be considered eligible for the Program, provided other eligibility requirements are met. Migrant campsites satisfy the residency requirement, as do shelters for the homeless. Homeless persons as defined in Section 4.304.41 satisfy the residency requirement as long as dual participation in any month of eligibility is not allowed.</p> <p>E. In no instance shall there be a durational residency requirement imposed upon the applicant. Intent to permanently remain in the state shall not be a condition of eligibility.</p>	<p>households to file an application in a nearby specified county/district office.</p> <p>B. Individuals may not participate in more than one household in any one (1) month unless they are a resident of a shelter for battered women and children, nor may a household participate in more than one (1) county or district in any month unless all household members are residents of a shelter for battered women and children.</p> <p>Households on Indian reservations participating in the Commodity Food Distribution Program for a particular period shall not be allowed to participate in the Food Assistance Program during the same period. Participation shall be limited to participation in the Commodity Program or the Food Assistance Program.</p> <p>C. Applicants who maintain a residence in the county or district for any purpose other than a vacation, regardless of the length of time they have resided in the county or district, shall be considered eligible for the Program, provided other eligibility requirements are met.</p> <p>D. Applicants who reside in a county, without residing in a permanent dwelling nor having a fixed mailing address, shall be considered eligible for the Program, provided other eligibility requirements are met. Migrant campsites satisfy the residency requirement, as do shelters for the homeless. Homeless persons satisfy the residency requirement as long as dual participation in any month of eligibility is not allowed.</p> <p>E. In no instance shall there be a durational residency requirement imposed upon the applicant. Intent to permanently remain in the state shall not be a condition of eligibility.</p> <p>F. The application contains spaces for both a</p>	<p>not necessary to understand the context of this citation.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>F. The application contains spaces for both a physical address and a mailing address. If the household has a mailing address that is different than the household's physical address, the certification worker should ensure that both addresses are given. For households residing in a permanent dwelling, a mailing address only, such as post office box or rural route, will not be sufficient, as it does not indicate the household resides in the county. In such cases, information should be given that can identify the location of the home. An exception to the requirement for physical location may be granted for residents of shelters for battered women and children and those that lack a permanent dwelling.</p> <p>E. See Section 4.803.3 for the disqualification penalties that can be imposed upon an individual for misrepresenting his/her identity and/or residency to receive duplicate benefits.</p>	<p>physical address and a mailing address. If the household has a mailing address that is different than the household's physical address, the certification worker should ensure that both addresses are given. For households residing in a permanent dwelling, a mailing address only, such as post office box or rural route, will not be sufficient, as it does not indicate the household resides in the county. In such cases, information should be given that can identify the location of the home. An exception to the requirement for physical location may be granted for residents of shelters for battered women and children and those that lack a permanent dwelling.</p>		
4.304.2	Removed unnecessary cross references.	<p>Shared Living Arrangements</p> <p>A. In instances when two (2) households request Food Assistance for the same child, the child shall be considered a member of the household that provides the majority of the child's monthly meals.</p> <p>If only one (1) household is applying for or requesting Food Assistance benefits for a child, then determining a majority of meals shall not be a factor when determining household composition.</p> <p>B. If two (2) households request assistance for the same child and both households provide an equal number of meals to the child, and the households cannot agree on who should receive Food Assistance benefits for the child for the duration of the certification period, then the household that applies for Food Assistance benefits for the child first shall be able to</p>	<p>Shared Living Arrangements</p> <p>A. In instances when two (2) households request Food Assistance for the same child, the child shall be considered a member of the household that provides the majority of the child's monthly meals.</p> <p>If only one (1) household is applying for or requesting Food Assistance benefits for a child, then determining a majority of meals shall not be a factor when determining household composition.</p> <p>B. If two (2) households request assistance for the same child and both households provide an equal number of meals to the child, and the households cannot agree on who should receive Food Assistance benefits for the child for the duration of the certification period, then the household that applies for Food Assistance benefits for the child first shall be able to receive benefits</p>	The citations to other sections of the Food Assistance regulation are not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>receive benefits for the child.</p> <p>C. In instances when an applicant or ongoing household requests benefits for a child who is already receiving Food Assistance in another household, the household who provides the child with the majority of meals shall be eligible to receive benefits for the child (see Section 4.505.4).</p> <p>D. Changes in household composition shall be handled in accordance with Section 4.604.</p>	<p>for the child.</p> <p>C. In instances when an applicant or ongoing household requests benefits for a child who is already receiving Food Assistance in another household, the household who provides the child with the majority of meals shall be eligible to receive benefits for the child.</p>		
4.304.3(D)	Removed language to match federal regulation.	<p>D. Boarders</p> <p>Individuals residing with others and paying reasonable compensation to others for lodging and meals. Boarders are not eligible to participate in the Food Assistance Program as a separate household.</p> <p>1. Boarders shall not be considered members of a participant or applicant household, unless the household requests that they be considered as members. If the boarder is not considered a household member, the income and resources of the boarder shall not be considered available to the household. However, the amount of payment that a boarder gives to a household for lodging and meals shall be treated as self-employment income to the household. If the household requests that the boarder be considered a household member, the boarder's income and resources shall be considered available to the household.</p> <p>2. Individuals for whom foster care payments are intended are to be treated as boarders. If the household requests to include those individuals as household members, the foster care payments received by the household will be included as unearned income.</p>	<p>D. Boarders</p> <p>Individuals residing with others and paying reasonable compensation to others for lodging and meals. Boarders are not eligible to participate in the Food Assistance Program as a separate household.</p> <p>1. Boarders shall not be considered members of a participant or applicant household, unless the household requests that they be considered as members. If the boarder is not considered a household member, the income and resources of the boarder shall not be considered available to the household. However, the amount of payment that a boarder gives to a household for lodging and meals shall be treated as self-employment income to the household. If the household requests that the boarder be considered a household member, the boarder's income and resources shall be considered available to the household.</p> <p>2. Individuals for whom foster care payments are intended are to be treated as boarders. If the household requests to include those individuals as household members, the foster care payments received by the household will be included as unearned income.</p>	Removed language as it is in conflict with federal regulation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		If foster care payments are received and the individuals are treated as boarders, then the foster care payments shall be handled as self-employment income (see Section 4.403.2). The foster care payments will be disregarded as an expense of doing business.			
4.304.41	Removed citations with definitions included in the citation in order to move to definition section and removed unnecessary cross references.	<p><b>Exemptions from the Boarding House and Institution Prohibitions</b></p> <p>A. An individual who is a resident of federally subsidized housing for elderly persons under Section 202 of the Housing Act of 1959 or Section 236 of the National Housing Act. A person who is elderly is defined as a member of a household who is sixty (60) years of age or older.</p> <p>B. Narcotic addicts or alcoholics and their children, who, for purposes of regular participation in a drug or alcoholic treatment and rehabilitation program, reside at a facility or treatment center (see Section 4.309.3).</p> <p>C. Residents of a public or private nonprofit group living arrangement facility, who are blind or disabled recipients who meet the definition of blind or disabled under the Food and Nutrition Act of 2008, as described below. The details for certification of a group living situation are contained in Section 4.309.4.</p> <p>1. A person who is disabled is defined as a member of a household who:</p> <p>a. Receives Supplemental Security Income benefits under Title XVI of the Social Security Act, or the Colorado Supplement, or Aid to the Needy and Disabled- Supplemental Security Income- Colorado Supplement (AND-SSI-CS), or Aid to the Blind-Supplemental Security Income-</p>	<p><b>Exemptions from the Boarding House and Institution Prohibitions</b></p> <p>A. An individual who is a resident of federally subsidized housing for elderly persons under Section 202 of the Housing Act of 1959 or Section 236 of the National Housing Act. A person who is elderly is defined as a member of a household who is sixty (60) years of age or older.</p> <p>B. Narcotic addicts or alcoholics and their children, who, for purposes of regular participation in a drug or alcoholic treatment and rehabilitation program, reside at a facility or treatment center.</p> <p>C. Residents of a public or private nonprofit group living arrangement facility, who are blind or disabled.</p> <p>D. Women or women and their children who are temporarily residing in a public or private nonprofit shelter for battered women and children.</p> <p>E. Residents of public or private nonprofit shelters for homeless persons.</p>	<p>Definition of disabled and homeless are in the definition section.</p> <p>Verification information in separate section and is inherently discussed in definition of disability.</p> <p>The citations to other sections of the Food Assistance regulation are not necessary to understand the context of this citation.</p>	



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>Colorado Supplement (AB-SSI-CS); or disability or blindness payments under Title I, II, X, or IXV of the Social Security Act;</p> <p>b. Is a veteran with a service-connected disability rated or paid as a total disability under Title 38 of the United States Code or is a veteran receiving a pension for a non-service connected disability;</p> <p>c. Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the Code;</p> <p>d. Is a surviving spouse of a veteran and considered in need of aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under Title 38 of the United States Code;</p> <p>e. Is a surviving spouse or child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under Title 38 of the United States Code and has a disability considered permanent under Section 221(i) of the Social Security Act. "Entitled", as used in this definition, refers to those veterans' surviving spouses and children who are receiving the compensation or benefits or have been approved for such benefits but are not receiving them.</p> <p>f. Is a person who has a disability considered permanent under Section 221(i)</p>			

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>of the Social Security Act (SSA) and receives a federal, state, or local public disability retirement pension;</p> <p>g. Is a person who receives an annuity for disability from the Railroad Retirement Board who is considered disabled by the SSA or who qualifies for Medicare as determined by the Railroad Retirement Board;</p> <p>h. Is a recipient of interim assistance benefits pending the receipt of the Supplemental Security Income (SSI), disability-related medical assistance under the Title XIX of the Social Security Act, or disability-based state assistance benefits provided that the eligibility to receive these benefits is based on disability or blindness criteria which are at least as stringent as those used under Title XVI of the Social Security Act.</p> <p>2. Verification</p> <p>a. For Item 1, a, above, the household shall provide proof that the person with a disability is receiving benefits under Title I, II, X, XIV, or XVI of the Social Security Act.</p> <p>b. For Item 1, b, above, the household shall provide a statement from the VA that the disability is rated or paid as total.</p> <p>c. For Items 1, c and d, above, proof of receipt of VA Disability Benefits is sufficient verification.</p> <p>d. For Items 1, e and f, above, unless</p>			

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>the disability is obvious to the agency (based upon SSA's current list of disabilities considered permanent), a statement from a physician or a licensed certified psychologist is required stating such a basis.</p> <p>e. For Item 1, g, above, the household shall provide proof that the individual receives a disability annuity from the Railroad Retirement Board and has been determined to qualify for Medicare.</p> <p>f. For Item 1, h, above, the household shall provide proof that the individual receives interim assistance benefits pending the receipt of SSI or disability- related medical assistance under Title XIX of the Social Security Act or disability- based state general assistance benefits (AND or AB). The local office shall verify that the eligibility to receive the state general assistance, interim assistance, or medical assistance benefits is based on disability or blindness criteria which are at least as stringent as those used under Title XVI of the Social Security Act, as amended, (codified at 42 USC 1381-1383f). The Act(s) do not include any later amendments to or editions of the incorporated material. Copies of federal laws are available for inspection during normal working hours by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, CO 80203; or a state publications depository.</p> <p>D. Women or women and their children who are temporarily residing in a public or private nonprofit shelter for battered women and children. (see Section</p>			

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>4.309.2 .)</p> <p>E. Residents of public or private nonprofit shelters for homeless persons.</p> <p>A homeless individual is an individual who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is:</p> <ol style="list-style-type: none"> <li>1. A supervised shelter which provides temporary accommodations; or,</li> <li>2. A temporary residence for individuals intended to be institutionalized; or,</li> <li>3. A temporary accommodation in the residence of another individual; the household will only be considered homeless if the accommodation is no more than ninety (90) days; or,</li> <li>4. A place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings.</li> </ol>			
4.305.2(D)(6)	Removed unnecessary cross reference.	<p>D. Calculating Sponsor Income</p> <p>6. Total resources of the sponsor and the sponsor's spouse shall be considered as resources to the non-citizen reduced by one thousand five hundred dollars (\$1,500). See Section 4.206 "Categories of Eligibility" regarding which households are subject to a resource limit.</p>	<p>D. Calculating Sponsor Income</p> <p>6. Total resources of the sponsor and the sponsor's spouse shall be considered as resources to the non-citizen reduced by one thousand five hundred dollars (\$1,500).</p>	The citation to another section of the Food Assistance regulation is not necessary to understand the context of this citation.	
4.305.2(F)	Removed unnecessary cross reference.	<p>F. Verification Requirements</p> <p>The local office shall verify the following information at the time of initial application and recertification:</p> <ol style="list-style-type: none"> <li>1. The income and resources of the non-</li> </ol>	<p>F. Verification Requirements</p> <p>The local office shall verify the following information at the time of initial application and recertification:</p> <ol style="list-style-type: none"> <li>1. The income and resources of the non-citizen's</li> </ol>	The citation to another section of the Food Assistance regulation is not necessary to	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>citizen's sponsor and the sponsor's spouse (if the spouse is living with the sponsor) at the time of the non-citizen's application for Food Assistance.</p> <p>2. The names (and alien registration numbers) of other non-citizens for whom the sponsor has signed an affidavit of support or similar agreement.</p> <p>3. The number of dependents who are eligible to be claimed for federal income tax purposes by the sponsor and the sponsor's spouse.</p> <p>4. The name, address, and phone number of the non-citizen's sponsor.</p> <p>5. Any other information that is determined to be questionable and which affects household eligibility and benefit level shall be verified in accordance with Section 4.500.</p>	<p>sponsor and the sponsor's spouse (if the spouse is living with the sponsor) at the time of the non-citizen's application for Food Assistance.</p> <p>2. The names (and alien registration numbers) of other non-citizens for whom the sponsor has signed an affidavit of support or similar agreement.</p> <p>3. The number of dependents who are eligible to be claimed for federal income tax purposes by the sponsor and the sponsor's spouse.</p> <p>4. The name, address, and phone number of the non-citizen's sponsor.</p>	understand the context of this citation.	
4.306(A)	Removed citation with definitions included in the citation in order to move to definition section.	<p><b>Student Eligibility</b></p> <p>A. Any person who is age eighteen (18) through forty-nine (49), physically and mentally fit, and enrolled at least half time in an institution of higher education shall not be eligible to participate in the Food Assistance Program unless the person meets at least one of the criteria listed in Section 4.306.1.</p> <p>Institutions of higher education are defined as those institutions that normally require a high school diploma or equivalency certificate for a student to enroll. Post-high school education includes, but is not limited to, colleges, universities, and post-high school level technical and vocational schools.</p>	<p><b>Student Eligibility</b></p> <p>A. Any person who is age eighteen (18) through forty-nine (49), physically and mentally fit, and enrolled at least half time in an institution of higher education shall not be eligible to participate in the Food Assistance Program unless the person meets at least one of the criteria listed below.</p>	Institutions of higher education is defined in definitions.	
4.307	Duplicative reference.	<p><b>STRIKER ELIGIBILITY</b></p> <p>A. Households containing a striking member shall not be eligible for Food Assistance unless the household was eligible for the Program the day before the strike</p>	<p><b>STRIKER ELIGIBILITY</b></p> <p>A. Households containing a striking member shall not be eligible for Food Assistance unless the household was eligible for the Program the day before the strike and are</p>	Language in D was repetitive of language in A within this same section.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>and are otherwise eligible at time of the strike. Households where the striking member was exempt from work registration the day before the strike shall not be subject to these provisions and shall be certified if otherwise eligible, unless the exemption was based on the employment.</p> <p>B. Pre-strike eligibility is determined by considering the day prior to the strike as the day of application and assuming the strike was not occurring. Eligibility at the time of application shall be determined by comparing the striking member's income as of the day before the strike to the striking member's current income and adding the higher of the two (2) to the current income of the non-striking household members during the month of application. The higher income will be used in determining benefits.</p> <p>C. For Food Assistance purposes, a striker is anyone involved in a strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees. Individuals will be deemed participants in a strike whether or not they personally voted for the strike.</p> <p>D. Households containing a striking member shall not be eligible for Food Assistance unless the household was eligible for the Program the day prior to the strike, and is otherwise eligible at the time of application.</p>	<p>otherwise eligible at time of the strike. Households where the striking member was exempt from work registration the day before the strike shall not be subject to these provisions and shall be certified if otherwise eligible, unless the exemption was based on the employment.</p> <p>B. Pre-strike eligibility is determined by considering the day prior to the strike as the day of application and assuming the strike was not occurring. Eligibility at the time of application shall be determined by comparing the striking member's income as of the day before the strike to the striking member's current income and adding the higher of the two (2) to the current income of the non-striking household members during the month of application. The higher income will be used in determining benefits.</p> <p>C. For Food Assistance purposes, a striker is anyone involved in a strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees. Individuals will be deemed participants in a strike whether or not they personally voted for the strike.</p>		
4.308 (B-E)	Removed unnecessary cross references.	<p><b>VOLUNTARY QUIT</b></p> <p>B. When a household files an application, or when a participating household reports the loss of a source of income or reduction in hours, the local office shall determine whether any household member voluntarily quit or reduced his or her hours or income. Benefits</p>	<p><b>VOLUNTARY QUIT</b></p> <p>B. When a household files an application, or when a participating household reports the loss of a source of income or reduction in hours, the local office shall determine whether any household member voluntarily quit or reduced his or her hours or income. Benefits shall</p>	The citations to other sections of the Food Assistance regulation are not necessary to understand the	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>shall not be delayed beyond the processing standards as specified in Section 4.205.2 pending the outcome of this determination. A sanction shall be imposed if the quit or reduction in hours or wages occurred within sixty (60) calendar days prior to the date of application or anytime thereafter, and the quit or reduction was without good cause. An employee of the federal government, or of a state or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike, shall be considered to have voluntarily quit his or her job without good cause. If an individual quits a job, secures new employment at comparable wages or hours, and, through no fault of his or her own loses the new job, the earlier quit shall not be a basis for disqualification.</p> <p>C. In the case of an applicant household, the local office shall determine whether any currently unemployed household member who is required to register for work or was exempt from registration for being employed has voluntarily quit his or her most recent job within the last sixty (60) days. If the local office learns that a household has lost a source of income after the date of application but before the household is certified, the local office shall determine whether a voluntary quit occurred.</p> <p>The nonexempt individual who quit or reduced work hours will be ineligible to participate for the sanction period if the household is determined eligible for the Food Assistance Program. The individual will be required to comply with Employment First following the sanction period unless the individual becomes exempt from work requirements.</p> <p>D. In the case of the participating household, the local office shall determine whether any household member voluntarily quit his or her job while participating in the</p>	<p>not be delayed pending the outcome of this determination. A sanction shall be imposed if the quit or reduction in hours or wages occurred within sixty (60) calendar days prior to the date of application or anytime thereafter, and the quit or reduction was without good cause. An employee of the federal government, or of a state or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike, shall be considered to have voluntarily quit his or her job without good cause. If an individual quits a job, secures new employment at comparable wages or hours, and, through no fault of his or her own loses the new job, the earlier quit shall not be a basis for disqualification.</p> <p>C. In the case of an applicant household, the local office shall determine whether any currently unemployed household member who is required to register for work or was exempt from registration for being employed has voluntarily quit his or her most recent job within the last sixty (60) days. If the local office learns that a household has lost a source of income after the date of application but before the household is certified, the local office shall determine whether a voluntary quit occurred.</p> <p>The nonexempt individual who quit or reduced work hours will be ineligible to participate for the sanction period if the household is determined eligible for the Food Assistance Program. The individual will be required to comply with Employment First following the sanction period unless the individual becomes exempt from work requirements.</p> <p>D. In the case of the participating household, the local office shall determine whether any household member voluntarily quit his or her job while participating in the Program. If a household is already participating when a quit that occurred prior to certification is discovered, the household shall be regarded as a participating</p>	context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>Program. If a household is already participating when a quit that occurred prior to certification is discovered, the household shall be regarded as a participating household.</p> <p>E. Upon a determination that the individual voluntarily quit employment, reduced work hours below thirty (30) hours, or reduced wages to the point at which the person is earning less than the federal minimum wage multiplied by thirty (30) hours, the local office shall determine if the voluntary quit was with good cause.</p> <p>If an individual voluntarily quits or reduces work hours/wages without good cause, the individual will be disqualified in the same manner as individuals failing to comply with work registration or Employment First requirements (See Section 4.310.6).</p>	<p>household.</p> <p>E. Upon a determination that the individual voluntarily quit employment, reduced work hours below thirty (30) hours, or reduced wages to the point at which the person is earning less than the federal minimum wage multiplied by thirty (30) hours, the local office shall determine if the voluntary quit was with good cause.</p> <p>If an individual voluntarily quits or reduces work hours/wages without good cause, the individual will be disqualified in the same manner as individuals failing to comply with work registration or Employment First requirements</p>		
4.308.1	Added language to align with federal regulation.	<p><b>Good Cause for Quitting or Reducing Work Hours</b></p> <p>Upon a determination that the individual voluntarily quit employment, the local office shall determine if there was good cause which shall include, but not be limited to, any of the following:</p> <p>A. Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin, or political beliefs;</p> <p>B. Work demands or conditions that render continued employment unreasonable such as working without being paid on schedule;</p> <p>C. Acceptance by the individual of employment; or enrollment of at least half-time in any recognized school, training program, or institution of higher education, that requires the individual to leave employment;</p>	<p><b>Good Cause for Quitting or Reducing Work Hours</b></p> <p>Upon a determination that the individual voluntarily quit employment, the local office shall determine if there was good cause which shall include, but not be limited to, any of the following:</p> <p>A. Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin, or political beliefs;</p> <p>B. Work demands or conditions that render continued employment unreasonable such as working without being paid on schedule;</p> <p>C. Acceptance by the individual of employment; or enrollment of at least half-time in any recognized school, training program, or institution of higher education, that requires the individual to leave employment;</p> <p>D. Acceptance by any other household member of</p>	Lack of adequate child care for children who have reached age 6 but are under age 12, is a federally allowed reason for quitting or reducing work hours.	



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>D. Acceptance by any other household member of employment or enrollment at least half-time in any recognized school, training program, or institution of higher education in another county or political subdivision which requires the household to move and thereby requires the individual to leave employment;</p> <p>E. Resignations by persons under the age of sixty (60) that are recognized by the employer as retirement;</p> <p>F. Resignation from employment that does not meet suitable criteria specified in Section 4.310.51;</p> <p>G. Because of circumstances beyond the control of the individual, accepted full time employment subsequently either does not materialize or results in employment of less than thirty (30) hours a week or weekly earnings of less than the federal minimum wage multiplied by thirty (30) hours;</p> <p>H. Leaving a job in connection with patterns of employment in which workers frequently move from one employer to another, such as migrant farm labor or construction work, even though employment at the new site has not actually begun;</p> <p>I. Illness of the head of household;</p> <p>J. Illness of another household member requiring the presence of the head of household;</p> <p>K. A household emergency;</p> <p>L. The unavailability of transportation; or,</p> <p>M. Employer demands a reduction in participant's work effort or salary through no fault of the employee.</p>	<p>employment or enrollment at least half-time in any recognized school, training program, or institution of higher education in another county or political subdivision which requires the household to move and thereby requires the individual to leave employment;</p> <p>E. Resignations by persons under the age of sixty (60) that are recognized by the employer as retirement;</p> <p>F. Resignation from employment that does not meet suitable criteria specified in Section 4.310.51;</p> <p>G. Because of circumstances beyond the control of the individual, accepted full time employment subsequently either does not materialize or results in employment of less than thirty (30) hours a week or weekly earnings of less than the federal minimum wage multiplied by thirty (30) hours;</p> <p>H. Leaving a job in connection with patterns of employment in which workers frequently move from one employer to another, such as migrant farm labor or construction work, even though employment at the new site has not actually begun;</p> <p>I. Illness of the head of household;</p> <p>J. Illness of another household member requiring the presence of the head of household;</p> <p>K. A household emergency;</p> <p>L. The unavailability of transportation; or,</p> <p>M. Employer demands a reduction in participant's work effort or salary through no fault of the employee.</p> <p>N. Lack of adequate child care for children who have reached age 6 but are under age 12.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
4.309.21	Added language to align with federal regulation.	<p><b>Residents of Shelters for Battered Women and Children</b></p> <p>Women or women with their children who are temporarily residing in a shelter for battered women and children (which serves over fifty percent (50%) of their meals) shall be considered exempt from the prohibition against residents of institutions.</p> <p>A. They shall be allowed to apply and be considered for eligibility as individual (parent/child) units, rather than considered as part of a household consisting of all shelter residents.</p> <p>B. Since leaving a shelter may pose a hazard to many of these women and children, the local office shall make provisions to interview these persons over the telephone, if the client feels it is necessary.</p> <p>C. In many instances battered women and their children who were previously certified in the household of an abuser may not have access to their allotment. Therefore, these individuals shall be allowed to participate in one (1) additional project area and/or household so long as one of the two households with which they are participating contains the individual who abused them. These persons may receive an additional allotment only once in a month.</p> <p>D. The local office should act promptly to reflect the changes in household composition and shall act on the change to reduce or terminate benefits to the applicant's former household as appropriate.</p> <p>E. Shelter residents who apply as separate households shall be certified solely on the basis of their income and resources and the expenses for which they are responsible. They shall be certified without regard to the income, resources, and/or</p>	<p><b>Residents of Shelters for Battered Women and Children</b></p> <p>Women or women with their children who are temporarily residing in a shelter for battered women and children (which serves over fifty percent (50%) of their meals) shall be considered exempt from the prohibition against residents of institutions.</p> <p>A. They shall be allowed to apply and be considered for eligibility as individual (parent/child) units, rather than considered as part of a household consisting of all shelter residents.</p> <p>B. In many instances battered women and their children who were previously certified in the household of an abuser may not have access to their allotment. Therefore, these individuals shall be allowed to participate in one (1) additional project area and/or household so long as one of the two households with which they are participating contains the individual who abused them. These persons may receive an additional allotment only once in a month.</p> <p>C. The local office should act promptly to reflect the changes in household composition and shall act on the change to reduce or terminate benefits to the applicant's former household as appropriate.</p> <p>D. Shelter residents who apply as separate households shall be certified solely on the basis of their income and resources and the expenses for which they are responsible. They shall be certified without regard to the income, resources, and/or expenses of their former household. Jointly held resources shall be considered inaccessible to the household if access to such resources is dependent upon the agreement of a joint owner who still resides in the former household.</p>	<p>Federal regulations allow states the option to have telephone interviews as the primary method of interviewing households. Colorado has selected telephone interviews as the primary method of interviewing Food Assistance households. Neither a statewide nor a household waiver is required to complete a telephone interview.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		expenses of their former household. Jointly held resources shall be considered inaccessible to the household if access to such resources is dependent upon the agreement of a joint owner who still resides in the former household.			
4.309.31	Removed outdated references	<p><b>Responsibilities of the Center</b></p> <p>Drug or alcohol treatment and rehabilitation centers will be responsible for the following:</p> <p>A. The drug or alcohol treatment center employee designated to serve as an authorized representative shall be responsible for obtaining their own Electronic Benefit Transfer (EBT) card and Personal Identification Number (PIN) with which to access benefits from the resident's account while the resident remains a resident of the facility.</p> <p>The resident's EBT card shall be stored in a secure area while the resident receives treatment at the facility. The drug or alcohol treatment center shall not have access to, or knowledge of, the PIN for the resident's own EBT card.</p> <p>B. Each treatment and rehabilitation center shall provide the certification office with a certified list of currently participating residents and their children residing with them in the center. The certification office shall require the list on a monthly or semimonthly basis. In addition, the certification office shall conduct periodic, random, onsite visits to the center to ensure the accuracy of the listings and that the local office's records are consistent and up-to-date. The frequency of periodic visits is left to the discretion of the local office but once each year is recommended.</p> <p>C. The treatment center shall notify the certification office of changes in the household's</p>	<p><b>Responsibilities of the Center</b></p> <p>Drug or alcohol treatment and rehabilitation centers will be responsible for the following:</p> <p>A. The drug or alcohol treatment center employee designated to serve as an authorized representative shall be responsible for obtaining their own Electronic Benefit Transfer (EBT) card and Personal Identification Number (PIN) with which to access benefits from the resident's account while the resident remains a resident of the facility.</p> <p>The resident's EBT card shall be stored in a secure area while the resident receives treatment at the facility. The drug or alcohol treatment center shall not have access to, or knowledge of, the PIN for the resident's own EBT card.</p> <p>B. Each treatment and rehabilitation center shall provide the certification office with a certified list of currently participating residents and their children residing with them in the center. The certification office shall require the list on a monthly or semimonthly basis. In addition, the certification office shall conduct periodic, random, onsite visits to the center to ensure the accuracy of the listings and that the local office's records are consistent and up-to-date. The frequency of periodic visits is left to the discretion of the local office but once each year is recommended.</p> <p>C. The treatment center shall also report when the resident leaves the treatment center. The treatment</p>	Removed references to requirements of Change Reporting, which is no longer a reporting category as all Food Assistance households are Simplified Reporting.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>circumstances in accordance with reporting requirements outlined in Section 4.603.</p> <p>D. The treatment center shall also report when the resident leaves the treatment center. The treatment center shall return to the issuing office any benefits received after the household has left the center.</p> <p>The treatment center shall provide the residents with their EBT card when the household leaves the treatment and rehabilitation program. Once the household leaves the treatment center the center is no longer allowed to act as that household's authorized representative. The departing resident shall receive his/her full allotment if already issued and if no benefits have been spent on his/her behalf. If benefits have been issued and any portion have been spent on his/her behalf and the resident leaves, the treatment center shall return a prorated amount of the household's monthly allotment back to the household's EBT account based on the number of days in the month that the household resided at the center. Under no circumstances shall the center pull benefits from an EBT card after the resident has left the facility. In addition, the drug or alcohol treatment center shall return the authorized representative EBT card, and the resident's card if it was left behind, to the issuing office within five (5) calendar days of the resident's departure.</p> <p>The center shall provide the household with a change report form as soon as it has knowledge the household plans to leave the facility and advise the household to return the form to the local Food Assistance office within ten (10) days of any change the household is required to report.</p> <p>E. The organization or institution shall be</p>	<p>center shall return to the issuing office any benefits received after the household has left the center.</p> <p>The treatment center shall provide the residents with their EBT card when the household leaves the treatment and rehabilitation program. Once the household leaves the treatment center the center is no longer allowed to act as that household's authorized representative. The departing resident shall receive his/her full allotment if already issued and if no benefits have been spent on his/her behalf. If benefits have been issued and any portion have been spent on his/her behalf and the resident leaves, the treatment center shall return a prorated amount of the household's monthly allotment back to the household's EBT account based on the number of days in the month that the household resided at the center. Under no circumstances shall the center pull benefits from an EBT card after the resident has left the facility. In addition, the drug or alcohol treatment center shall return the authorized representative EBT card, and the resident's card if it was left behind, to the issuing office within five (5) calendar days of the resident's departure.</p> <p>The center shall provide the household with a change report form as soon as it has knowledge the household plans to leave the facility and advise the household to return the form to the local Food Assistance office within ten (10) days of any change the household is required to report.</p> <p>D. The organization or institution shall be responsible for any misrepresentation or fraud, which it knowingly commits in the certification of center residents. As an authorized representative, the organization or institution shall be knowledgeable about household circumstances and should carefully review those circumstances with residents prior to applying on their behalf.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>responsible for any misrepresentation or fraud, which it knowingly commits in the certification of center residents. As an authorized representative, the organization or institution shall be knowledgeable about household circumstances and should carefully review those circumstances with residents prior to applying on their behalf.</p> <p>F. The organization or institution may be penalized or disqualified if it is determined administratively or judicially that benefits were misappropriated or used for purchases that did not contribute to a certified household's meals. The certification office shall promptly notify the state office when it has reason to believe that an organization or institution is misusing Food Assistance benefits in its possession. However, no action shall be taken against the organization or institution prior to an FNS investigation. The certification office shall establish a claim for over-issuance of Food Assistance benefits held on behalf of resident clients if any over-issuances are discovered as a result of an FNS investigation or hearing. If FNS disqualifies an organization or institution as an authorized treatment center, the certification office shall suspend its authorized representative status for the same period.</p>	<p>E. The organization or institution may be penalized or disqualified if it is determined administratively or judicially that benefits were misappropriated or used for purchases that did not contribute to a certified household's meals. The certification office shall promptly notify the state office when it has reason to believe that an organization or institution is misusing Food Assistance benefits in its possession. However, no action shall be taken against the organization or institution prior to an FNS investigation. The certification office shall establish a claim for over-issuance of Food Assistance benefits held on behalf of resident clients if any over-issuances are discovered as a result of an FNS investigation or hearing. If FNS disqualifies an organization or institution as an authorized treatment center, the certification office shall suspend its authorized representative status for the same period.</p>		
4.309.4(A)	Removed inaccurate cross-reference.	<p><b>Residents of Group Living Arrangements</b></p> <p>A. Group living arrangements are residential settings that are considered alternatives to institutional living. Institutional settings are not included in this provision. To be eligible as residents of a group living arrangement, the person shall be blind or disabled as defined in Section 4.304.41. In addition, the local office shall verify that the group living arrangement is a public or private nonprofit facility with no more than sixteen (16) residents, and is certified as a group living arrangement by the Colorado Department of Public Health and Environment and the Colorado Department</p>	<p><b>Residents of Group Living Arrangements</b></p> <p>A. Group living arrangements are residential settings that are considered alternatives to institutional living. Institutional settings are not included in this provision. To be eligible as residents of a group living arrangement, the person shall be disabled. In addition, the local office shall verify that the group living arrangement is a public or private nonprofit facility with no more than sixteen (16) residents, and is certified as a group living arrangement by the Colorado Department of Public Health and Environment and the Colorado Department of Human Services under Section 1616(e)</p>	Definition of disabled is in the definition section.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		of Human Services under Section 1616(e) of the Social Security Act. FNS may also certify under standards determined by the USDA that are comparable to standards implemented the state under 1616(e) of the Social Security Act (codified at 42 USC). The federal laws do not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection during normal working hours by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository. Individuals residing in a for profit facility are considered residents of an institution per Section 4.304.4(E).	of the Social Security Act. FNS may also certify under standards determined by the USDA that are comparable to standards implemented the state under 1616(e) of the Social Security Act (codified at 42 USC). The federal laws do not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection during normal working hours by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository. Individuals residing in a for profit facility are considered residents of an institution per Section 4.304.4(E).		
4.401	Removed unnecessary cross references, unnecessary statements, and duplicative references.	<p><b>INCOME ELIGIBILITY STANDARDS</b></p> <p>Participation in the Program shall be limited to those households whose incomes are determined to be a substantially limiting factor.</p> <p>The gross and net income standards of eligibility shall be based on the federal income poverty levels established as provided in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) and as stated in Section 273.9(A) of the Code of Federal Regulations; no later editions or amendments are incorporated. Copies of these regulations are available for inspection during normal working hours by contacting: Colorado Department of Human Services, Director, Food Assistance Programs Division, 1575 Sherman Street, Denver, Colorado 80203; or any state publications depository.</p> <p>The gross and net income standards are located in Sections 4.401.1 and 4.401.2.</p> <p>A. Income eligibility is determined based on the composition of the household. A household shall meet</p>	<p><b>INCOME ELIGIBILITY STANDARDS</b></p> <p>A. Income eligibility is determined based on the composition of the household. A household shall meet the gross and net income eligibility standards as outlined below:</p> <ol style="list-style-type: none"> <li>Expanded categorically eligible households must have gross income below two hundred percent (200%) of the federal poverty level.</li> <li>Basic categorically eligible households shall be deemed as having met gross and net income limits.</li> <li>Households which are not considered expanded or basic categorically eligible and instead subject to standard eligibility rules shall meet income eligibility standards as follows: <ol style="list-style-type: none"> <li>Households that do not include a member who is elderly or a person with a disability shall have gross income at or below one hundred thirty percent (130%) of the federal poverty level and have a net income at or below one hundred percent (100%) of the federal</li> </ol> </li> </ol>	<p>Reference to the Community Services Block grant as the regulation that sets the federal poverty levels is unnecessary.</p> <p>Language referencing two income levels for expanded categorically eligible households is inaccurate.</p> <p>Language regarding required changes which was included in</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>the gross and net income eligibility standards as outlined below:</p> <ol style="list-style-type: none"> <li>1. Expanded categorically eligible households, as defined in Section 4.206, that do not include a member who is elderly and/or a person with a disability, shall have gross income at or below one hundred thirty percent (130%) of the federal poverty level and have a net income at or below one hundred percent (100%) of the federal poverty level.</li> <li>2. Households that do include a member who is elderly and/or a person with a disability shall have gross income at or below two hundred percent (200%) of the federal poverty level and have net income at or below one hundred percent (100%) of the federal poverty level.</li> <li>3. Basic categorically eligible households shall be deemed as having met gross and net income limits.</li> <li>4. Households which are not considered expanded or basic categorically eligible and instead subject to standard eligibility rules shall meet income eligibility standards as follows: <ol style="list-style-type: none"> <li>a. Households that do not include a member who is elderly or a person with a disability shall have gross income at or below one hundred thirty percent (130%) of the federal poverty level and have a net income at or below one hundred percent (100%) of the federal poverty level.</li> <li>b. Households that do include a member who is elderly or a person with a disability shall have a net income at or below one hundred percent (100%) of the federal poverty level.</li> </ol> </li> <li>5. For household members who are persons</li> </ol>	<p>poverty level.</p> <ol style="list-style-type: none"> <li>b. Households that do include a member who is elderly or a person with a disability shall have a net income at or below one hundred percent (100%) of the federal poverty level.</li> <li>5. For household members who are persons that are elderly and/or have a disability, who are unable to purchase and prepare meals because he or she suffers from a disability considered permanent under the Social Security Act, or a non-disease related, severe, permanent disability, may be considered, together with his or her spouse if the spouse is living in the same home, a separate household from the others with whom the individual lives. The combined income of the others with whom the individual who is elderly and disabled resides (excluding the income of individual who is elderly and disabled and his or her spouse) must not exceed one hundred sixty five percent (165%) of the poverty level. See Sections 4.401.1 and 4.401.2 for the gross and net income levels for 165% of the federal poverty level.</li> <li>B. Ineligible students and household members who are ineligible due to citizenship status, intentional program violation, failure to cooperate with work programs, or failure to provide or apply for a Social Security Number, shall be excluded when determining the household size and the appropriate income eligibility maximum and/or level of benefits.</li> </ol>	<p>'C' is no longer applicable as all Food Assistance households are Simplified Reporting.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>that are elderly and/or have a disability, who are unable to purchase and prepare meals because he or she suffers from a disability considered permanent under the Social Security Act, or a non-disease related, severe, permanent disability, may be considered, together with his or her spouse if the spouse is living in the same home, a separate household from the others with whom the individual lives. The combined income of the others with whom the individual who is elderly and disabled resides (excluding the income of individual who is elderly and disabled and his or her spouse) must not exceed one hundred sixty five percent (165%) of the poverty level. See Sections 4.401.1 and 4.401.2 for the gross and net income levels for 165% of the federal poverty level.</p> <p>B. Ineligible students and household members who are ineligible due to citizenship status, intentional program violation, failure to cooperate with work programs, or failure to provide or apply for a Social Security Number, shall be excluded when determining the household size and the appropriate income eligibility maximum and/or level of benefits.</p> <p>C. When a certified household has person who is elderly or a person with a disability move into or out of the household, or has a member who becomes sixty (60) years old or begins to receive SSI, disability payments, or veterans benefits, or otherwise becomes classified as a person who is elderly or a person with a disability as defined in Section 4.304.41 a reportable change shall be acted upon within ten (10) calendar days from the day the local office is notified. If the change is not one that the household is required to report, and it is unknown to the local office, the net income eligibility standard will be applied at the time of recertification.</p>			



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
4.401.1	Removed unnecessary and duplicative statements.	<p>Gross Income Eligibility Determination</p> <p>A household evaluated under standard eligibility rules may be eligible if its monthly nonexempt earned and unearned income does not exceed the gross income level. If after deducting any legally obligated child support payments and no other deductions, the household exceeds the gross income level there are no further computations required to consider the household's net income level. Instead, a Notice of Action form is completed to deny the household.</p> <p>The gross income level for households eligible under standard eligibility rules that do not include a member who is elderly and/or a person with a disability is one hundred thirty percent (130%) of the federal poverty level.</p> <p>Gross Income Levels Effective October 1, 2017, the gross income level for one hundred thirty percent (130%), two hundred percent (200%), and one hundred sixty-five percent (165%) of the federal poverty level for the corresponding household size is as follows:</p>	<p>Gross Income Levels</p> <p>Effective October 1, 2017, the gross income level for one hundred thirty percent (130%), two hundred percent (200%), and one hundred sixty-five percent (165%) of the federal poverty level for the corresponding household size is as follows:</p>	Removed paragraphs which include information included on standard eligibility which is discussed in 4.206.	
4.401.2	Removed unnecessary and duplicative statements.	<p>Net Income Eligibility Determination</p> <p>A. Households evaluated under standard eligibility rules whose income does not exceed the gross income level as outlined in this section shall have their eligibility for benefits computed allowing the earned income, standard, dependent care, medical, and shelter deductions, as appropriate. The household shall be eligible only if its monthly gross income, less the allowable Food Assistance deductions, is below the maximum net eligibility level for their household size. A standard eligibility household that exceeds the net eligibility level must be denied.</p> <p>B. A standard eligibility household shall be</p>	<p>Net Income Levels</p> <p>Effective October 1, 2017, the net income level of one hundred percent (100%) of the federal poverty level for the corresponding household size is as follows:</p>	Removed paragraphs which include information included on standard eligibility which is discussed in 4.206.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>eligible for Food Assistance benefits if its monthly nonexempt earned and unearned income, less all applicable deductions, including the earned income, standard, medical, dependent care, and unlimited excess shelter deduction, does not exceed the maximum net income level.</p> <p>C. If a household contains a member who is fifty-nine (59) years old on the date of application, but who will become sixty (60) years of age before the end of the month of application, the local office shall determine the household's eligibility as if the person is sixty (60) years of age.</p> <p>D. Net Income Levels</p> <p>Effective October 1, 2017, the net income level of one hundred percent (100%) of the federal poverty level for the corresponding household size is as follows:</p>			
4.402	Removed unnecessary cross references.	<p>HOUSEHOLD INCOME ELIGIBILITY</p> <p>A. Determining Income</p> <p>1. Income eligibility shall be determined prospectively based on the eligibility worker's anticipation of income at the time of application and when changes are made known to the local office. See Section 4.603.1 for rules concerning anticipating income. Income shall be determined as it is anticipated to be received unless the income is averaged over the certification period in accordance with Section 4.402.2.</p> <p>2. When determining if a household is eligible under gross and/or net income limits, households shall have income converted to a monthly amount by using a conversion as specified below. When a full month's income is anticipated any cents in the gross weekly or biweekly earnings shall be used in converting income to a monthly amount.</p>	<p>HOUSEHOLD INCOME ELIGIBILITY</p> <p>A. Determining Income</p> <p>1. Income eligibility shall be determined prospectively based on the eligibility worker's anticipation of income at the time of application and when changes are made known to the local office.</p> <p>2. When determining if a household is eligible under gross and/or net income limits, households shall have income converted to a monthly amount by using a conversion as specified below. When a full month's income is anticipated any cents in the gross weekly or biweekly earnings shall be used in converting income to a monthly amount.</p> <p>Monthly income amounts shall be rounded to the nearest dollar amounts. Each monthly income figure that ends in 1 through 49 cents is rounded down, and each monthly income figure that ends in 50 through 99 cents</p>	The citations to other sections of the Food Assistance regulation are not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail																																
		<p>Monthly income amounts shall be rounded to the nearest dollar amounts. Each monthly income figure that ends in 1 through 49 cents is rounded down, and each monthly income figure that ends in 50 through 99 cents is rounded to the next dollar.</p> <table><tr><th>Pay</th><th>Conversion</th></tr><tr><td>Weekly</td><td>Multiply Weekly by Average by 4.3.</td></tr><tr><td>Bi-Weekly (Every Two</td><td>Multiply Bi-Weekly Average by</td></tr><tr><td>Semi-Monthly (Twice a</td><td>Multiply Semi-Monthly Average by</td></tr><tr><td>Every Other Month</td><td>Multiply Average by 0.5.</td></tr><tr><td>Quarterly</td><td>Multiply Average by 0.333333.</td></tr><tr><td>Twice a Year</td><td>Multiply Average by 0.166666.</td></tr><tr><td>Annual</td><td>Multiply Average by .083.</td></tr></table> <p>3. Household income shall mean all earned and unearned income received or anticipated to be received by household members from whatever source, unless specifically exempted for Food Assistance eligibility and budgeting purposes, per Section 4.405. Income of household members, including the amount of the disqualified person's income attributed to the household, shall be counted as income in the month received or the month it becomes available, unless the income is averaged over the certification period. See Section 4.411 for additional information.</p> <p>B. Variations in Date of Pay</p> <p>1. Regular ongoing earned income that is received early or late by a household due to a holiday, a weekend, or pay dates being changed will have income courted based on the regular pay schedule instead of the actual date of pay.</p> <p>2. Households receiving monthly benefits such as public assistance or social security payments shall</p>	Pay	Conversion	Weekly	Multiply Weekly by Average by 4.3.	Bi-Weekly (Every Two	Multiply Bi-Weekly Average by	Semi-Monthly (Twice a	Multiply Semi-Monthly Average by	Every Other Month	Multiply Average by 0.5.	Quarterly	Multiply Average by 0.333333.	Twice a Year	Multiply Average by 0.166666.	Annual	Multiply Average by .083.	<p>is rounded to the next dollar.</p> <table><tr><th>Pay</th><th>Conversion</th></tr><tr><td>Weekly</td><td>Multiply Weekly by Average by 4.3.</td></tr><tr><td>Bi-Weekly (Every Two</td><td>Multiply Bi-Weekly Average by 2.15.</td></tr><tr><td>Semi-Monthly (Twice a</td><td>Multiply Semi-Monthly Average by 2.</td></tr><tr><td>Every Other Month</td><td>Multiply Average by 0.5.</td></tr><tr><td>Quarterly</td><td>Multiply Average by 0.333333.</td></tr><tr><td>Twice a Year</td><td>Multiply Average by 0.166666.</td></tr><tr><td>Annual</td><td>Multiply Average by .083.</td></tr></table> <p>3. Household income shall mean all earned and unearned income received or anticipated to be received by household members from whatever source, unless specifically exempted for Food Assistance eligibility and budgeting purposes, per Section 4.405. Income of household members, including the amount of the disqualified person's income attributed to the household, shall be counted as income in the month received or the month it becomes available, unless the income is averaged over the certification period.</p> <p>B. Variations in Date of Pay</p> <p>1. Regular ongoing earned income that is received early or late by a household due to a holiday, a weekend, or pay dates being changed will have income courted based on the regular pay schedule instead of the actual date of pay.</p> <p>2. Households receiving monthly benefits such as public assistance or social security payments shall not have their monthly income varied merely because mailing cycles resulted in two (2) payments in one month and none in the next month.</p> <p>3. Households containing a member of the Armed</p>	Pay	Conversion	Weekly	Multiply Weekly by Average by 4.3.	Bi-Weekly (Every Two	Multiply Bi-Weekly Average by 2.15.	Semi-Monthly (Twice a	Multiply Semi-Monthly Average by 2.	Every Other Month	Multiply Average by 0.5.	Quarterly	Multiply Average by 0.333333.	Twice a Year	Multiply Average by 0.166666.	Annual	Multiply Average by .083.		
Pay	Conversion																																				
Weekly	Multiply Weekly by Average by 4.3.																																				
Bi-Weekly (Every Two	Multiply Bi-Weekly Average by																																				
Semi-Monthly (Twice a	Multiply Semi-Monthly Average by																																				
Every Other Month	Multiply Average by 0.5.																																				
Quarterly	Multiply Average by 0.333333.																																				
Twice a Year	Multiply Average by 0.166666.																																				
Annual	Multiply Average by .083.																																				
Pay	Conversion																																				
Weekly	Multiply Weekly by Average by 4.3.																																				
Bi-Weekly (Every Two	Multiply Bi-Weekly Average by 2.15.																																				
Semi-Monthly (Twice a	Multiply Semi-Monthly Average by 2.																																				
Every Other Month	Multiply Average by 0.5.																																				
Quarterly	Multiply Average by 0.333333.																																				
Twice a Year	Multiply Average by 0.166666.																																				
Annual	Multiply Average by .083.																																				

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>not have their monthly income varied merely because mailing cycles resulted in two (2) payments in one month and none in the next month.</p> <p>3. Households containing a member of the Armed Services of the United States shall not have their monthly income varied merely because the first day of the month falls on a holiday or weekend which resulted in two (2) payments in the month and none in the subsequent month.</p> <p>C. Wage Data</p> <p>1. With respect to income or resource information originating with the Internal Revenue Service (IRS) and provided through the income and eligibility verification system (IEVS), as well as wage data obtained through the DOLE or IEVS, the local office must verify such information from another source and must verify applicant/participant access to that income/resource. The local office may not take adverse action on such information until independent verification is obtained, or until the applicant has been found to have failed to cooperate in providing the required verification. The information must also be verified prior to establishing a claim for an over-issuance of benefits.</p> <p>2. Income considered verified upon receipt as outlined in Section 4.504.6 shall be considered verified once it is known to the agency. If the household declares that the information is not accurate, the household shall be given an opportunity to provide verification in order to resolve the discrepancy.</p>	<p>Services of the United States shall not have their monthly income varied merely because the first day of the month falls on a holiday or weekend which resulted in two (2) payments in the month and none in the subsequent month.</p> <p>C. Wage Data</p> <p>1. With respect to income or resource information originating with the Internal Revenue Service (IRS) and provided through the income and eligibility verification system (IEVS), as well as wage data obtained through the DOLE or IEVS, the local office must verify such information from another source and must verify applicant/participant access to that income/resource. The local office may not take adverse action on such information until independent verification is obtained, or until the applicant has been found to have failed to cooperate in providing the required verification. The information must also be verified prior to establishing a claim for an over-issuance of benefits.</p>		
4.402.1	Removed unnecessary and duplicative statements and cross references.	<p>Prospective Budgeting</p> <p>A. Prospective budgeting is the process of computing a household's allotment based on anticipated income and circumstances during the</p>	<p>Prospective Budgeting</p> <p>A. Prospective budgeting is the process of computing a household's allotment based on anticipated income and circumstances during the issuance month.</p>	Removed references to requirements of Change Reporting, which	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>issuance month. All Food Assistance households and all situations require prospective budgeting determinations, including public assistance households under the Title IVA (Temporary Assistance to Needy Families/Colorado Works) Program.</p> <p>B. If the date of receipt or the amount of any anticipated income is uncertain, such as a new job or a PA application, that portion of income shall not be considered. Only the portion of income which can be anticipated with reasonable certainty concerning the amount and month in which monies will be received shall be counted as income.</p> <p>If a household is certified using anticipated income and the county department subsequently receives documentation verifying a lower amount of income, the change in income shall take effect the month following the month the change is considered reported. If the documentation verifies a higher amount of income, but the income does not cause the household to exceed 130% of the federal poverty level, the change in income shall not cause a decrease in benefits until recertification or periodic report for simplified reporting households, but may cause a decrease in benefits for non-simplified reporting households (see Section 4.604, D).</p> <p>C. Income received within the past thirty (30) days may be used as an indication of the income that will be received in the issuance month unless changes in income have occurred or can be anticipated which require proper adjustment. Income used to determine prospective eligibility shall be representative of the household's current circumstances.</p> <p>If the verified income does not provide an accurate indication of anticipated income, a longer period of</p>	<p>All Food Assistance households and all situations require prospective budgeting determinations, including public assistance households under the Title IVA (Temporary Assistance to Needy Families/Colorado Works) Program.</p> <p>B. If the date of receipt or the amount of any anticipated income is uncertain, such as a new job or a PA application, that portion of income shall not be considered. Only the portion of income which can be anticipated with reasonable certainty concerning the amount and month in which monies will be received shall be counted as income.</p> <p>C. Income received within the past thirty (30) days may be used as an indication of the income that will be received in the issuance month unless changes in income have occurred or can be anticipated which require proper adjustment. Income used to determine prospective eligibility shall be representative of the household's current circumstances.</p> <p>If the verified income does not provide an accurate indication of anticipated income, a longer period of past time may be used if it will provide a more accurate indication of anticipated income. If a household's income fluctuates seasonally, it may be appropriate to use the last season rather than the last thirty (30) days, although precaution must be taken to account for possible fluctuations or new circumstances. Except for eligible strikers, no household shall have the amount of any past income automatically attributed to it.</p>	<p>is no longer a reporting category as all Food Assistance households are Simplified Reporting.</p> <p>'D' is removed as the following section 4.402.2 has information on using average monthly income, thus statement is repetitive.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>past time may be used if it will provide a more accurate indication of anticipated income. If a household's income fluctuates seasonally, it may be appropriate to use the last season rather than the last thirty (30) days, although precaution must be taken to account for possible fluctuations or new circumstances. Except for eligible strikers, no household shall have the amount of any past income automatically attributed to it.</p> <p>D. In cases where the receipt of income for households is reasonably certain but the monthly amount is expected to fluctuate, the household may qualify to have its income averaged to obtain a monthly amount (refer to Section 4.402.2).</p>			
4.403(E)	Removed unnecessary cross references.	<p>E. Self-Employment</p> <p>The method of ascertaining the self-employment income to be considered for Food Assistance purposes is often difficult and the guidelines set forth in Sections 4.403.1–4.403.12 are meant to clarify and aid the process.</p> <p>In determining gross self-employment income, all income received by the self-employment household must be considered. Self-employment income includes:</p> <ol style="list-style-type: none"> <li>Monies received from rental or lease of self-employment property. Rental property shall be considered a self-employment enterprise. However, the income will be considered as earned income only if the household member (or disqualified person) actively manages the property at least an average of twenty (20) hours per week.</li> <li>Monies received from the sale of capital goods, services, and property connected to the self-employment enterprise. Proceeds of sales from capital goods or equipment are to be treated as income rather</li> </ol>	<p>E. Self-Employment</p> <p>The method of ascertaining the self-employment income to be considered for Food Assistance purposes is often difficult and the guidelines set forth in Sections 4.403.1–4.403.12 are meant to clarify and aid the process.</p> <p>In determining gross self-employment income, all income received by the self-employment household must be considered. Self-employment income includes:</p> <ol style="list-style-type: none"> <li>Monies received from rental or lease of self-employment property. Rental property shall be considered a self-employment enterprise. However, the income will be considered as earned income only if the household member (or disqualified person) actively manages the property at least an average of twenty (20) hours per week.</li> <li>Monies received from the sale of capital goods, services, and property connected to the self-employment enterprise. Proceeds of sales from capital goods or equipment are to be treated as income rather than as capital gains.</li> </ol>	Removed reference to information included within the same section.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>than as capital gains.</p> <p>The term "capital gains", as used by the Internal Revenue Service (IRS), describes the handling of the profit from the sale of capital assets such as, but not limited to, computers and other electronic devices, office furniture, vehicles, and equipment used in a self-employment enterprise; or securities, real estate, or other real property held as an investment for a set period of time. For Food Assistance purposes, the total amount received from the sale of capital goods shall be counted as income to the household.</p> <p>3. Income from roomers/boarders (see paragraph G below).</p>	<p>The term "capital gains", as used by the Internal Revenue Service (IRS), describes the handling of the profit from the sale of capital assets such as, but not limited to, computers and other electronic devices, office furniture, vehicles, and equipment used in a self-employment enterprise; or securities, real estate, or other real property held as an investment for a set period of time. For Food Assistance purposes, the total amount received from the sale of capital goods shall be counted as income to the household.</p>		
4.403.1	Removed unnecessary language.	<p>Self-Employment</p> <p>See Section 4.403, E, for a description of what is considered self-employment income.</p> <p>A. Self-employment is defined as a situation where some or all income is received from a self-operated business or enterprise in which the individual retains control over work or services offered, and assumes the necessary business risks and expenses connected with the operation of the business.</p> <p>Households in which one or more members are engaged in an enterprise for gain either as an independent contractor, franchise holder, or owner-operator must be considered as self-employed, provided that the members are actively engaged in the enterprise on a day-to-day basis. In instances where the members hire or contract for another person or firm to handle the day-to-day activities of such enterprise, the members will have self-employment income but will not be considered as self-employed for purposes of work registration. The self-employed individual need not own one hundred percent (100%)</p>	<p>Self-Employment</p> <p>See Section 4.403, E, for a description of what is considered self-employment income.</p> <p>A. Self-employment is defined as a situation where some or all income is received from a self-operated business or enterprise in which the individual retains control over work or services offered, and assumes the necessary business risks and expenses connected with the operation of the business.</p> <p>Households in which one or more members are engaged in an enterprise for gain either as an independent contractor, franchise holder, or owner-operator must be considered as self-employed, provided that the members are actively engaged in the enterprise on a day-to-day basis. In instances where the members hire or contract for another person or firm to handle the day-to-day activities of such enterprise, the members will have self-employment income but will not be considered as self-employed for purposes of work registration. The self-employed individual need not own one hundred percent (100%) of the company to be</p>	<p>Removed statement on all other financial criteria applying to self-employment households as the statement is unnecessary since these apply to all households unless specifically exempted from these requirements.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>of the company to be considered self- employed.</p> <p>All financial and non-financial eligibility criteria shall apply to self-employment households.</p> <p>B. The receipt of income from self-employment, which may constitute all or only a portion of the income of the household, does not automatically exempt the members from the work registration requirement. This determination will be made based on the assessment of the eligibility technician and the household's declaration that the self-employment enterprise requires thirty (30) hours of work per week or averages annually thirty (30) hours per week.</p>	<p>considered self- employed.</p> <p>B. The receipt of income from self-employment, which may constitute all or only a portion of the income of the household, does not automatically exempt the members from the work registration requirement. This determination will be made based on the assessment of the eligibility technician and the household's declaration that the self-employment enterprise requires thirty (30) hours of work per week or averages annually thirty (30) hours per week.</p>		
4.404	Removed unnecessary and duplicative statements and cross references.	<p>COUNTABLE UNEARNED INCOME</p> <p>Unearned income shall include, but not be limited to, the following:</p> <p>A. Assistance Payments</p> <p>Payment from federal or federally aided public assistance programs, such as Supplemental Security Income (SSI), or Colorado Works/Temporary Assistance to Needy Families (TANF)/Title IV-A, or other assistance programs based on need, including payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves. Payments identified as energy assistance would be excluded in accordance with Section 4.405.2.</p> <p>Foster care payments for children or adults will only be included as income when the individual for whom the payment is intended is included as a member of the household (see Section 4.304.3).</p>	<p>COUNTABLE UNEARNED INCOME</p> <p>Unearned income shall include, but not be limited to, the following:</p> <p>A. Assistance Payments</p> <p>Payment from federal or federally aided public assistance programs, such as Supplemental Security Income (SSI), or Colorado Works/Temporary Assistance to Needy Families (TANF)/Title IV-A, or other assistance programs based on need, including payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves.</p> <p>B. Retirement and Disability Payments</p> <p>Payments from annuities; pensions; retirement; veterans or disability benefits; workmen's or unemployment compensation; old age, survivors, or Social Security benefits; and strike benefits.</p> <p>C. Support and Alimony Payments</p>	<p>The citations to other sections of the Food Assistance regulation are not necessary to understand the context of this citation.</p> <p>Information on Educational Monies (D) is actually referencing income that is not countable, this section is on countable income.</p>	



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>B. Retirement and Disability Payments</p> <p>Payments from annuities; pensions; retirement; veterans or disability benefits; workmen's or unemployment compensation; old age, survivors, or Social Security benefits; and strike benefits.</p> <p>C. Support and Alimony Payments</p> <p>Support and alimony payments made directly to the household from non-household members for normal living expenses.</p> <p>D. Educational Monies</p> <p>1. Money that is legally obligated or otherwise payable to a household member for education, which includes the amount from scholarships, educational grants, fellowships, deferred payment loans for education, veteran's educational benefits, and any other money received specifically for education expenses shall not be considered as unearned income.</p> <p>E. Rental Income</p> <p>Rental income is total income, less the cost of doing business, from rental property in which a household member (or disqualified individual) is not actively managing the property an average of at least twenty (20) hours a week (see Section 4.403.1).</p> <p>F. Income of Non-Citizen Sponsors</p> <p>Income of non-citizen sponsors shall be considered as unearned income to households containing sponsored non-citizens. Refer to Section 4.305.4 for specific instructions.</p>	<p>Support and alimony payments made directly to the household from non-household members for normal living expenses.</p> <p>D. Rental Income</p> <p>Rental income is total income, less the cost of doing business, from rental property in which a household member (or disqualified individual) is not actively managing the property an average of at least twenty (20) hours a week.</p> <p>E. Income of Non-Citizen Sponsors</p> <p>Income of non-citizen sponsors shall be considered as unearned income to households containing sponsored non-citizens.</p> <p>F. Vacation Pay, Sick Pay, and Bonus Pay</p> <p>If vacation pay, sick pay, or bonus pay is received in installment payments after a person has terminated employment, it is considered unearned income. If the pay is received in a lump sum, it shall be considered as a resource in the month received.</p> <p>H. Gifts</p> <p>Gifts from nonprofit organizations that exceed three hundred dollars (\$300) in a quarter or gifts from other sources of any amount, if they can be anticipated.</p> <p>H. Other Gain or Benefits</p> <p>Dividends, interest, royalties, and all other nonexempt direct money payments from any source that can be construed to be a gain or benefit.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>G. Vacation Pay, Sick Pay, and Bonus Pay</p> <p>If vacation pay, sick pay, or bonus pay is received in installment payments after a person has terminated employment, it is considered unearned income. If the pay is received in a lump sum, it shall be considered as a resource in the month received.</p> <p>H. Gifts</p> <p>Gifts from nonprofit organizations that exceed three hundred dollars (\$300) in a quarter or gifts from other sources of any amount, if they can be anticipated, and are not exempt as income under Section 4.405.</p> <p>I. Other Gain or Benefits</p> <p>Dividends, interest, royalties, and all other nonexempt direct money payments from any source that can be construed to be a gain or benefit.</p> <p>Monies withdrawn from trust funds are income in the month received. Dividends that the household has the option of either receiving as income or reinvesting in the trust must be considered as income in the month they are available to the household.</p>	<p>Monies withdrawn from trust funds are income in the month received. Dividends that the household has the option of either receiving as income or reinvesting in the trust must be considered as income in the month they are available to the household.</p>		
4.405(C)	Added clarifying language to align with federal regulation.	<p>Earnings of Children</p> <p>The earned income of children who are under eighteen (18) years of age, who are members of the household and are students at least half-time in elementary school, high school, or classes to obtain a General Equivalency Diploma (GED), will be considered exempt income.</p> <p>The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings or</p>	<p>Earnings of Children</p> <p>The earned income of children who are under eighteen (18) years of age, who live with their natural parent, adoptive parent, stepparent, or are under the parental control of another household member other than a parent and are students at least half-time in elementary school, high school, or classes to obtain a General Equivalency Diploma (GED), will be considered exempt income.</p> <p>The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or</p>	<p>When a student turns eighteen (18) during a certification period, Simplified Reporting rules apply and the income is required to be reported and is not acted on until next certification.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>amount of work performed cannot be differentiated from that of other household members, the total earnings shall be prorated equally among the working members and the child's pro rata share excluded.</p> <p>If the student becomes eighteen (18) years of age in the month of application, the income shall be excluded for the month of application and counted the following month. If the student turns eighteen (18) during the certification period .the income shall be excluded until the month following the month the student becomes eighteen (18) years of age.</p> <p>Individuals are considered children for purposes of this provision if they are under eighteen (18) years of age, live with their natural parent, adoptive parent or stepparent, or are under the parental control of another household member other than a parent.</p>	<p>vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings or amount of work performed cannot be differentiated from that of other household members, the total earnings shall be prorated equally among the working members and the child's pro rata share excluded.</p> <p>If the student becomes eighteen (18) years of age in the month of application, the income shall be excluded for the month of application and counted the following month. If the student turns eighteen (18) during the certification period, simplified reporting rules apply.</p>		
4.405(E-K)	Removed unnecessary and duplicative statements and cross references.	<p>E. Court Ordered Child Support Payable to Other Parties</p> <p>Income which is diverted from a household by a court order to pay a child support payment to or for a non-household member is deducted from income for the household making the payment (see Section 4.407.5).</p> <p>F. Non-recurring Lump Sum Payments</p> <p>Money received in the form of non-recurring lump sum payments, includes, but is not limited to, income tax refunds, rebates, or credits; retroactive lump-sum Social Security, SSI, public assistance, railroad retirement benefits or other payments; or retroactive lump-sum insurance settlements; or any money an inmate receives upon release from prison, including earnings from work performed while incarcerated and accumulated over the length of the incarceration.</p>	<p>E. Non-recurring Lump Sum Payments</p> <p>Money received in the form of non-recurring lump sum payments, includes, but is not limited to, income tax refunds, rebates, or credits; retroactive lump-sum Social Security, SSI, public assistance, railroad retirement benefits or other payments; or retroactive lump-sum insurance settlements; or any money an inmate receives upon release from prison, including earnings from work performed while incarcerated and accumulated over the length of the incarceration.</p> <p>State and county diversion payments under Colorado Works shall be excluded as a non-recurring lump sum payment if the payment does not cover more than ninety (90) days of expenses and is not expected to occur again in a twelve (12) month period.</p> <p>Non-recurring lump sum payments shall be counted as resources in the month received, unless specifically</p>	<p>Court Ordered Child Support Payable to Other Parties is described 4.407.4.</p> <p>Other removed cross-references are duplicative and are not necessary to understand the context of this citation.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>State and county diversion payments under Colorado Works shall be excluded as a non-recurring lump sum payment if the payment does not cover more than ninety (90) days of expenses and is not expected to occur again in a twelve (12) month period.</p> <p>Non-recurring lump sum payments shall be counted as resources in the month received, unless specifically excluded from consideration as a resource by other federal laws. Any funds remaining in subsequent months shall be considered a resource.</p> <p>Beginning December 17, 2010, Federal income tax refunds must be disregarded as a resource for twelve (12) months from the date of receipt by the client. These refunds are also excluded as income in the month received.</p> <p>G. Loans</p> <p>1. All loans from private individuals as well as commercial institutions shall not be considered as income, including educational loans.</p> <p>2. Monies received from a Reverse Annuity Mortgage (RAM) loan program should be treated as a loan and excluded from income. These loans meet the accepted definition of a loan since there is a verifiable agreement to repay with interest.</p> <p>See Section 4.405.1 for information about financial assistance.</p> <p>H. In-Kind Benefits</p> <p>An in-kind benefit is any gain or benefit received by the household that is not in the form of money such as meals, clothing, public housing, or produce from a garden.</p>	<p>excluded from consideration as a resource by other federal laws. Any funds remaining in subsequent months shall be considered a resource.</p> <p>F. Loans</p> <p>1. All loans from private individuals as well as commercial institutions shall not be considered as income, including educational loans.</p> <p>2. Monies received from a Reverse Annuity Mortgage (RAM) loan program should be treated as a loan and excluded from income. These loans meet the accepted definition of a loan since there is a verifiable agreement to repay with interest.</p> <p>G. In-Kind Benefits</p> <p>An in-kind benefit is any gain or benefit received by the household that is not in the form of money such as meals, clothing, public housing, or produce from a garden.</p> <p>H. Vendor Payments</p> <p>A payment made on behalf of a household shall be considered a vendor payment whenever a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. Vendor payments are excludable as follows:</p> <p>1. Such payments include subsidies paid to the households and legally obligated to the landlord, rent or mortgage payments made directly to landlords or mortgagees by the Department of Housing and Urban Development (HUD), or payments by a government</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>In-kind payments which would normally be excluded as income but are converted in whole or in part to a direct cash payment under the approval of a federally authorized demonstration project (including demonstration projects created by a waiver of the provisions of federal law) shall be excluded from income.</p> <p>I. Vendor Payments</p> <p>Vendor payments are money payments that are not payable directly to a household, but are paid to a third party for a household expense. A payment made on behalf of a household shall be considered a vendor payment whenever a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. Vendor payments are excludable as follows:</p> <p>1. Such payments include subsidies paid to the households and legally obligated to the landlord, rent or mortgage payments made directly to landlords or mortgagees by the Department of Housing and Urban Development (HUD), or payments by a government agency to a child care institution to provide day care for a household member are also excluded as vendor payments.</p> <p>2. Monies that are legally obligated and otherwise payable to the household, but which are diverted by the provider of the payment to a third party for household expense, shall be counted as income and not excluded as a vendor payment. The distinction is whether the person or organization making the payment on behalf of a household is using funds that otherwise would need to be paid to the</p>	<p>agency to a child care institution to provide day care for a household member are also excluded as vendor payments.</p> <p>2. Monies that are legally obligated and otherwise payable to the household, but which are diverted by the provider of the payment to a third party for household expense, shall be counted as income and not excluded as a vendor payment. The distinction is whether the person or organization making the payment on behalf of a household is using funds that otherwise would need to be paid to the household.</p> <p>3. Any emergency Public Assistance (PA) or General Assistance (GA) payment that is provided to a third party on behalf of the migrant or seasonal farm worker household, while the household is in the job stream, shall be excluded as income and considered as a vendor payment. These payments would normally be considered as income since the payment is legally obligated to the household.</p> <p>4. Wages earned by a household member that are garnished or diverted by an employer, and paid to a third party for a household's expenses, such as rent, shall be considered as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, this rent payment shall be excluded as a vendor payment. In addition, if the employer provides housing to an employee, the value of the housing shall not be counted as income.</p> <p>5. Assistance provided to a third party on behalf of a household by the state or local program shall be considered money payable directly to the household if the assistance is provided in lieu of:</p> <p>a. A regular benefit payable to the household for</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>household.</p> <p>3. Any emergency Public Assistance (PA) or General Assistance (GA) payment that is provided to a third party on behalf of the migrant or seasonal farm worker household, while the household is in the job stream, shall be excluded as income and considered as a vendor payment. These payments would normally be considered as income since the payment is legally obligated to the household.</p> <p>4. Wages earned by a household member that are garnished or diverted by an employer, and paid to a third party for a household's expenses, such as rent, shall be considered as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, this rent payment shall be excluded as a vendor payment. In addition, if the employer provides housing to an employee, the value of the housing shall not be counted as income.</p> <p>5. Assistance provided to a third party on behalf of a household by the state or local program shall be considered money payable directly to the household if the assistance is provided in lieu of:</p> <p>a. A regular benefit payable to the household for living expenses under a program funded under Part A of the Social Security Act; or,</p> <p>b. A benefit payable to the household for housing expenses under a state or local general assistance program or other assistance program comparable to general assistance.</p> <p>6. Assistance payments made to a third party for medical, child care, or emergency/special assistance would be excluded as a vendor payment.</p>	<p>living expenses under a program funded under Part A of the Social Security Act; or,</p> <p>b. A benefit payable to the household for housing expenses under a state or local general assistance program or other assistance program comparable to general assistance.</p> <p>6. Assistance payments made to a third party for medical, child care, or emergency/special assistance would be excluded as a vendor payment. Assistance payments provided by a state or local housing authority would also be excluded as income.</p> <p>7. Energy assistance payments, other than for the Low-Income Energy Assistance Program (LEAP) or a one-time payment under federal or state law for weatherization or to repair/replace an inoperative furnace or other heating or cooling device, that are made under a state or local program shall be counted as income. The exclusion will still apply if a down payment is made and is followed by a final payment upon completion of work. If a state law prohibits the household from receiving a cash payment under state or local general assistance (or comparable program), the assistance would be excluded. This applies to either an energy assistance payment or other type of payment. Energy assistance payments for an expense paid on behalf of the household under a state law shall be considered an out-of-pocket expense incurred and paid by the household.</p> <p>Energy assistance payments made under Part A of Title IV of the Social Security Act (42 U.S.C. 601, et seq.) is included as income. The Act does not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection during normal working hours by contacting: Director, Food Assistance Programs</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>Assistance payments provided by a state or local housing authority would also be excluded as income.</p> <p>7. Energy assistance payments, other than for the Low-Income Energy Assistance Program (LEAP) or a one-time payment under federal or state law for weatherization or to repair/replace an inoperative furnace or other heating or cooling device, that are made under a state or local program shall be counted as income. The exclusion will still apply if a down payment is made and is followed by a final payment upon completion of work. If a state law prohibits the household from receiving a cash payment under state or local general assistance (or comparable program), the assistance would be excluded. This applies to either an energy assistance payment or other type of payment. Energy assistance payments for an expense paid on behalf of the household under a state law shall be considered an out-of-pocket expense incurred and paid by the household.</p> <p>Energy assistance payments made under Part A of Title IV of the Social Security Act (42 U.S.C. 601, et seq.) is included as income. The Act does not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection during normal working hours by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository.</p> <p>8. Vendor payments which would normally be excluded as income but are converted in whole or in part to a direct cash payment under the approval of a federally authorized demonstration project (including demonstration projects created by a waiver of the provisions of federal law) shall be excluded from income.</p>	<p>Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository.</p> <p>8. Vendor payments which would normally be excluded as income but are converted in whole or in part to a direct cash payment under the approval of a federally authorized demonstration project (including demonstration projects created by a waiver of the provisions of federal law) shall be excluded from income.</p> <p>9. Monies from alimony or a court-ordered child support payment which are required by a court order (or other legally binding agreement) to be paid to a third party rather than to the household shall be excluded from income as a vendor payment, even if the household agrees to the arrangement.</p> <p>10. Payments in excess of the amount specified in a court order (or other legally binding agreement) which are paid to a third party in addition to a court-ordered vendor payment shall also be treated as a vendor payment.</p> <p>I. Reimbursements</p> <p>1. Reimbursement for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household shall not be considered income.</p> <p>To be excluded, the reimbursement must be provided specifically and used for an identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. Reimbursements for normal household living</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>9. Monies from alimony or a court-ordered child support payment which are required by a court order (or other legally binding agreement) to be paid to a third party rather than to the household shall be excluded from income as a vendor payment, even if the household agrees to the arrangement.</p> <p>10. Payments in excess of the amount specified in a court order (or other legally binding agreement) which are paid to a third party in addition to a court-ordered vendor payment shall also be treated as a vendor payment.</p> <p>J. Reimbursements</p> <p>1. Reimbursement for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household shall not be considered income.</p> <p>To be excluded, the reimbursement must be provided specifically and used for an identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. Reimbursements for normal household living expenses such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are not exempt.</p> <p>2. No portion of benefits provided under Title IV-A of the Social Security Act, to the extent such benefit is attributed to an adjustment for work related or child care expenses, except for payment or reimbursement for such expenses made under an education, employment, or training program initiated under such</p>	<p>expenses such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are not exempt.</p> <p>2. No portion of benefits provided under Title IV-A of the Social Security Act, to the extent such benefit is attributed to an adjustment for work related or child care expenses, except for payment or reimbursement for such expenses made under an education, employment, or training program initiated under such Title after September 18, 1988, shall be considered exempt under this provision.</p> <p>3. The amount by which a reimbursement exceeds the actual incurred expense shall be counted as income. However, reimbursements shall not be considered to exceed actual expenses unless the provider or the household indicates the amount is excessive.</p> <p>4. Types of reimbursement for expenses include:</p> <p>a. Reimbursement or flat allowances for job or training related expenses, such as travel, per diem, uniforms, and transportation to and from the job or training site including migrant travel.</p> <p>b. Reimbursements for out of pocket expenses of volunteers incurred in the course of their work.</p> <p>c. Medical or dependent care reimbursements.</p> <p>d. Reimbursements received by households to pay for services provided by Title XX of the Social Security Act.</p> <p>e. Reimbursements made to the household for expenses necessary for participation in an education component under the Employment First program.</p>		



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>Title after September 18, 1988, shall be considered exempt under this provision.</p> <p>3. The amount by which a reimbursement exceeds the actual incurred expense shall be counted as income. However, reimbursements shall not be considered to exceed actual expenses unless the provider or the household indicates the amount is excessive.</p> <p>4. Types of reimbursement for expenses include:</p> <p>a. Reimbursement or flat allowances for job or training related expenses, such as travel, per diem, uniforms, and transportation to and from the job or training site including migrant travel.</p> <p>b. Reimbursements for out of pocket expenses of volunteers incurred in the course of their work.</p> <p>c. Medical or dependent care reimbursements.</p> <p>d. Reimbursements received by households to pay for services provided by Title XX of the Social Security Act.</p> <p>e. Reimbursements made to the household for expenses necessary for participation in an education component under the Employment First program.</p> <p>K. Verification</p> <p>Documentation of exempt income may explain a household's ability to maintain itself. Verification of exempt income is necessary only if the income is questionable. For example, when it is questionable that money received is a loan, a simple statement signed by both parties must be obtained which states</p>	<p>J. Verification</p> <p>Documentation of exempt income may explain a household's ability to maintain itself. Verification of exempt income is necessary only if the income is questionable. For example, when it is questionable that money received is a loan, a simple statement signed by both parties must be obtained which states that the money is a loan and that a repayment is being made or will be made.</p> <p>If the household receives payments on a regular basis from the same source but claims that payments are loans, it may be required that the provider of the loan sign an affidavit stating that repayments are being made or will be made in accordance with an established repayment schedule.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>that the money is a loan and that a repayment is being made or will be made.</p> <p>If the household receives payments on a regular basis from the same source but claims that payments are loans, it may be required that the provider of the loan sign an affidavit stating that repayments are being made or will be made in accordance with an established repayment schedule.</p>			
4.405.1	Clarified language.	<p>Loans and Reimbursements to Students</p> <p>All education assistance including grants, scholarships, fellowships, work-study, veteran's educational benefits, and others that are awarded to a household member will be exempt from consideration as income.</p>	<p>Loans and Reimbursements to Students</p> <p>All education assistance including grants, scholarships, fellowships, work-study, veteran's educational benefits, and any other money received specifically for educational expenses are exempt from consideration as income.</p>	Section was re-written to more clearly state all education assistance income is excluded.	
4.406	Removed unnecessary cross reference.	<p>HOUSEHOLDS DESTITUTE OF INCOME</p> <p>Migrant or seasonal farm worker households may be considered destitute of income upon initial certification or recertification, but only for the first month of each certification period.</p> <p>Migrant or seasonal farm worker households may have little or no income at the time of application even though they receive income at some time during the month of application. Such households will be considered destitute and thereby entitled to expedited application processing (see Section 4.205.1), if their only income is from a terminated and/or new source under the following circumstances:</p> <p>The household's only income for the month of application was received from a terminated source prior to the date of application.</p> <p>Income is considered to be from a terminated source if it is normally received on a monthly or more frequent basis and is not expected to be received again from</p>	<p>HOUSEHOLDS DESTITUTE OF INCOME</p> <p>Migrant or seasonal farm worker households may be considered destitute of income upon initial certification or recertification, but only for the first month of each certification period.</p> <p>Migrant or seasonal farm worker households may have little or no income at the time of application even though they receive income at some time during the month of application. Such households will be considered destitute and thereby entitled to expedited application processing' if their only income is from a terminated and/or new source under the following circumstances:</p> <p>The household's only income for the month of application was received from a terminated source prior to the date of application.</p> <p>Income is considered to be from a terminated source if it is normally received on a monthly or more frequent basis and is not expected to be received again from the same source during either the remainder of the month of</p>	The citation to another section of the Food Assistance regulation is not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>the same source during either the remainder of the month of application or the month following (i.e., migrant work ended with one grower).</p> <p>Income that is normally received less often than monthly is considered to be from a terminated source if it is not anticipated to be received during the month in which it would normally be received (i.e., quarterly income not received in the normal third month).</p>	<p>application or the month following (i.e., migrant work ended with one grower).</p> <p>Income that is normally received less often than monthly is considered to be from a terminated source if it is not anticipated to be received during the month in which it would normally be received (i.e., quarterly income not received in the normal third month).</p>		
4.407	Updated language to align with federal regulation.	<p><b>DEDUCTIONS FROM INCOME</b></p> <p>A. Allowable deductions are subtracted from total monthly gross income to determine the household's monthly net Food Assistance income. The monthly income shall be rounded down to the lower dollar if it ends in one (1) through forty-nine (49) cents and rounded to the next dollar amount if it ends in fifty (50) through ninety-nine (99) cents before deductions are considered.</p> <p>Allowable expenses will not be deductible if covered by vendor payments such as HUD, or reimbursements, such as insurance. An expense which is covered by an excluded vendor payment that has been converted to a direct cash payment under a federally authorized demonstration project shall not be deductible.</p> <p>B. Households may elect to have fluctuating monthly expenses averaged over the certification period. Also, households have the option of having expenses that are billed less often than monthly averaged over the period the expense is intended to cover. Households may elect to have medical expenses averaged as described in Sections 4.407.6 and 4.407.61. Expenses that have been averaged are subject to the reporting requirements contained in Section 4.603.</p>	<p><b>DEDUCTIONS AND EXCLUSIONS FROM INCOME</b></p> <p>A. Allowable deductions are subtracted from total monthly gross income to determine the household's monthly net Food Assistance income. The monthly income shall be rounded down to the lower dollar if it ends in one (1) through forty-nine (49) cents and rounded to the next dollar amount if it ends in fifty (50) through ninety-nine (99) cents before deductions are considered.</p> <p>Allowable expenses will not be deductible if covered by vendor payments such as HUD, or reimbursements, such as insurance. An expense which is covered by an excluded vendor payment that has been converted to a direct cash payment under a federally authorized demonstration project shall not be deductible.</p> <p>B. Households may elect to have fluctuating monthly expenses averaged over the certification period. Also, households have the option of having expenses that are billed less often than monthly averaged over the period the expense is intended to cover. Households may elect to have medical expenses averaged as described in Sections 4.407.6 and 4.407.61. Expenses that have been averaged are subject to the reporting requirements contained in Section 4.603.</p> <p>C. Actual or averaged expenses that result in deductions for medical, dependent care, and shelter</p>	Federal regulations allow states the option of treating legally obligated child support as an income exclusion or an income deduction. Colorado has chosen to treat this income as an exclusion. Language has been updated to clearly reflect this option.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>C. Actual or averaged expenses that result in deductions for medical, dependent care, and shelter costs shall be anticipated. Households who expect changes cannot have their expenses averaged solely on the basis of the last several bills. Expenses that are billed on a weekly or biweekly basis shall be converted to a monthly figure utilizing the conversion outlined in Section 4.402.</p> <p>D. The following subsections contain the only deductions allowed from a household's monthly income. The deductions are as follows:</p> <ol style="list-style-type: none"> <li>Standard deduction</li> <li>Earned income deduction</li> <li>Excess shelter deduction</li> <li>Dependent care deduction</li> <li>Legally obligated child support expense deduction</li> <li>Excess medical deduction</li> </ol>	<p>costs shall be anticipated. Households who expect changes cannot have their expenses averaged solely on the basis of the last several bills. Expenses that are billed on a weekly or biweekly basis shall be converted to a monthly figure utilizing the conversion outlined in Section 4.402.</p> <p>D. Legally obligated child support is considered an income exclusion</p> <p>E. The following subsections contain the only deductions allowed from a household's monthly income. The deductions are as follows:</p> <ol style="list-style-type: none"> <li>Standard deduction</li> <li>Earned income deduction</li> <li>Excess shelter deduction</li> <li>Dependent care deduction</li> <li>Excess medical deduction</li> </ol>		
4.407.5	Updated language to align with federal regulation.	<p>Child Support Expense Deduction</p> <p>A. A household shall receive deduction from income for legally binding child support payments made to or for non-household members. The child support deduction will be made from the household's total countable gross income and prior to any gross income test to determine eligibility. The court-ordered amount and the most recent amounts that have been paid must be verified by the household. Legally obligated child support paid by a household member under the age of eighteen (18) shall be an allowable deduction, even if the income of the child is</p>	<p>Child Support Expense Exclusion</p> <p>A. A household shall receive an exclusion from income for legally binding child support payments made to or for non-household members. The child support exclusion will be made from the household's total countable gross income and prior to any gross income test to determine eligibility. The court-ordered amount and the most recent amounts that have been paid must be verified by the household. Legally obligated child support paid by a household member under the age of eighteen (18) shall be an allowable exclusion, even if the income of the child is considered exempt under Section</p>	Federal regulations allow states the option of treating legally obligated child support as an income exclusion or an income deduction. Colorado has chosen to treat this income as	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>considered exempt under Section 4.405, C.</p> <p>B. If the noncustodial parent makes child support payments to a third party non-household member (e.g., a landlord, utility company, or health insurance organization) in accordance with the support order, the payment shall be included in the child support deduction.</p> <p>C. A deduction for amounts paid toward arrearage will be allowed. Alimony payments will not be allowed as a deduction.</p> <p>D. Households with a history of three (3) or more months of paying child support shall have the support payments averaged taking into account any anticipated changes in the legal obligation and shall use that average as the household's support deduction.</p> <p>E. For households with less than a three (3) month record, the local office shall estimate the anticipated payments and use that estimate as the household's support deduction.</p> <p>F. If the household does not report and verify its monthly child support payment or a change in its legal obligation, the child support deduction shall not be allowed.</p> <p>G. Households not certified as simplified reporting are responsible to report during the certification period any change in the legal obligation to pay child support, including termination of the obligation when a child reaches an age at which child support is no longer obligated.</p> <p>H. All households are required to report a change of twenty-five dollars (\$25) or more in the</p>	<p>4.405, C.</p> <p>B. If the noncustodial parent makes child support payments to a third party non-household member (e.g., a landlord, utility company, or health insurance organization) in accordance with the support order, the payment shall be included in the child support exclusion.</p> <p>C. A deduction for amounts paid toward arrearage will be allowed. Alimony payments will not be allowed as a deduction.</p> <p>D. Households with a history of three (3) or more months of paying child support shall have the support payments averaged taking into account any anticipated changes in the legal obligation and shall use that average as the household's support exclusion.</p> <p>E. For households with less than a three (3) month record, the local office shall estimate the anticipated payments and use that estimate as the household's support exclusion.</p> <p>F. If the household does not report and verify its monthly child support payment or a change in its legal obligation, the child support exclusion shall not be allowed.</p>	<p>an exclusion. Language has been updated to clearly reflect this option.</p> <p>Removed reference to requirements of Change Reporting, which is no longer a reporting category as all Food Assistance households are Simplified Reporting.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		amount that was allowed for the deduction at the time of recertification or periodic report.			
4.407.6	Removed inaccurate cross-reference and added clarifying language.	<p>Excess Medical Deduction</p> <p>A household shall receive a deduction for total medical expenses in excess of thirty-five dollars (\$35) per month, incurred by any household member(s) who is elderly or disabled as defined in Section 4.304.41. Other household members who are not elderly or disabled, including spouses and dependents, cannot claim costs of their medical treatment and services.</p> <p>A. The following medical costs, less the cost of reimbursements from another source, are allowable:</p> <ol style="list-style-type: none"> <li>1. Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner or other qualified health professional.</li> <li>2. Hospitalization or outpatient treatment, nursing care, and nursing home care including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the Colorado Department of Public Health and Environment.</li> <li>3. Prescription drugs when prescribed by a licensed practitioner authorized under state law and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional. Costs of medical supplies, sickroom equipment (including rental), or other prescribed equipment may also be allowable.</li> <li>4. Health and hospitalization insurance policy premiums, Medicare premiums, and any cost-sharing expenses incurred by medical recipients.</li> </ol>	<p>Excess Medical Deduction</p> <p>A household shall receive a deduction for total medical expenses in excess of thirty-five dollars (\$35) per month, incurred by any household member(s) who is elderly or disabled. Other household members who are not elderly or disabled, including spouses and dependents, cannot claim costs of their medical treatment and services.</p> <p>A. The following medical costs, less the cost of reimbursements from another source, are allowable:</p> <ol style="list-style-type: none"> <li>1. Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner or other qualified health professional.</li> <li>2. Hospitalization or outpatient treatment, nursing care, and nursing home care including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the Colorado Department of Public Health and Environment.</li> <li>3. Prescription drugs when prescribed by a licensed practitioner authorized under state law and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional. Costs of medical supplies, sickroom equipment (including rental), or other prescribed equipment may also be allowable.</li> <li>4. Health and hospitalization insurance policy premiums, Medicare premiums, and any cost-sharing expenses incurred by medical recipients.</li> <li>5. Dentures, hearing aids, prosthetics, and</li> </ol>	<p>Definition of disabled is in the definition section.</p> <p>Clarified the use of the Internal Revenue Service (IRS) commercial mileage rate for medical expense deduction purposes.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>5. Dentures, hearing aids, prosthetics, and eyeglasses prescribed by a physician skilled in eye disease or by an optometrist.</p> <p>6. Securing and maintaining a service animal, such as a seeing-eye or hearing dog, including cost of food and veterinarian fees. The costs of caring for these animals may be deducted only when the animal has received special training to provide a service to the client.</p> <p>7. Reasonable transportation and lodging to obtain medical treatment or services. Mileage expenses shall be calculated based on the prevailing Internal Revenue Service (IRS) mileage rate used for medical purposes.</p> <p>8. Wages to an attendant, homemaker, home health aide, child care services, or a housekeeper necessary due to age, infirmity, or illness. In addition, an amount equal to the maximum allotment for one (1) person is allowed if the household furnishes the majority of the attendant's meals. The allotment shall be the one in effect at the time of certification with an appropriate adjustment at the next certification.</p> <p>If attendant care costs qualify under both medical and dependent care deduction, the costs shall be allowed as a medical expense.</p>	<p>eyeglasses prescribed by a physician skilled in eye disease or by an optometrist.</p> <p>6. Securing and maintaining a service animal, such as a seeing-eye or hearing dog, including cost of food and veterinarian fees. The costs of caring for these animals may be deducted only when the animal has received special training to provide a service to the client.</p> <p>7. Reasonable transportation and lodging to obtain medical treatment or services. Mileage expenses shall be calculated based on the prevailing Internal Revenue Service (IRS) commercial mileage rate used for medical purposes.</p> <p>8. Wages to an attendant, homemaker, home health aide, child care services, or a housekeeper necessary due to age, infirmity, or illness. In addition, an amount equal to the maximum allotment for one (1) person is allowed if the household furnishes the majority of the attendant's meals. The allotment shall be the one in effect at the time of certification with an appropriate adjustment at the next certification.</p> <p>If attendant care costs qualify under both medical and dependent care deduction, the costs shall be allowed as a medical expense.</p>		
4.408	Removed inaccurate cross-reference and duplicative language.	<p><b>RESOURCE ELIGIBILITY STANDARDS</b></p> <p>A. The local office shall consider households eligible under either expanded or basic categorical eligibility as outlined in Section 4.206 to have satisfied the resource eligibility criteria of this section. For households eligible under either basic or expanded categorical eligibility, the case shall be documented to show that all household members have been</p>	<p><b>RESOURCE ELIGIBILITY STANDARDS</b></p> <p>A. The local office shall consider households eligible under either expanded or basic categorical eligibility to have satisfied the resource eligibility criteria of this section.</p> <p>B. Households that do not meet expanded or basic categorical eligibility criteria shall have their</p>	The removed language and cross-references are duplicative and are not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>approved for and/or are receiving benefits from the program that confers basic categorical eligibility.</p> <p>B. Households that do not meet expanded or basic categorical eligibility criteria shall have their nonexempt resources, as anticipated to be available in the issuance month, used to determine household eligibility. See Section 4.409 for what is considered a non-exempt resource.</p> <p>For how resources of non-household members and disqualified members are handled, refer to Section 4.411.</p> <p>The resources of a sponsor and spouse considered toward a non-citizen household shall be the sponsor's total resources less two thousand dollars (\$2,000). See Section 4.411.</p> <p>C. The value of liquid resources, as declared by the household, shall be utilized in the determination of expedited eligibility for all applicant households.</p> <p>D. As a result of the Food, Conservation and Energy Act of 2008, adjustments to the Food Assistance resource limit will be subject to change annually according to the Consumer Price Index. There are currently two (2) resource limits:</p> <p>1. One established for households that do contain a member who is elderly and/or a person with a disability; and,</p> <p>2. Another established for households that do not contain a member who is elderly and/or a person with a disability.</p> <p>An elderly member is a member who is sixty (60) years of age or older. A disabled member is defined in</p>	<p>nonexempt resources, as anticipated to be available in the issuance month, used to determine household eligibility.</p> <p>The resources of a sponsor and spouse considered toward a non-citizen household shall be the sponsor's total resources less two thousand dollars (\$2,000).</p> <p>C. The value of liquid resources, as declared by the household, shall be utilized in the determination of expedited eligibility for all applicant households.</p> <p>D. As a result of the Food, Conservation and Energy Act of 2008, adjustments to the Food Assistance resource limit will be subject to change annually according to the Consumer Price Index. There are currently two (2) resource limits:</p> <p>1. One established for households that do contain a member who is elderly and/or a person with a disability; and,</p> <p>2. Another established for households that do not contain a member who is elderly and/or a person with a disability.</p> <p>E. The resource limits are as follows:</p> <p>Effective October 1, 2017, the resource limit for households that do contain a member who is elderly and/or a person with a disability is three thousand five hundred (\$3,500). The resource limit for households that do not contain a member who is elderly and/or a person with a disability is two thousand two hundred fifty dollars (\$2,250).</p>		



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>Section 4.304.41.</p> <p>E. The resource limits are as follows:</p> <p>Effective October 1, 2017, the resource limit for households that do contain a member who is elderly and/or a person with a disability is three thousand five hundred (\$3,500). The resource limit for households that do not contain a member who is elderly and/or a person with a disability is two thousand two hundred fifty dollars (\$2,250).</p>			
4.408.1	Removed unnecessary cross-references.	<p>Determining the Value of Resources</p> <p>The value of nonexempt household resources at the time the application is filed must be determined from applicant statements, documents, and/or from collateral contacts when household assessment is uncertain or questionable. See Section 4.409 for what is considered a non-exempt resource.</p> <p>A. Valuation of Liquid Resources</p> <p>The value of liquid resources is the current redemption rate less encumbrances. For further explanation of liquid and non-liquid resources, see Section 4.409.</p> <p>B. Valuation of Non-Liquid Resources</p> <p>Except for real property, non-exempt non-liquid resources shall have a fair market value as determined from the best source available (such as, but not limited to, blue book, local dealer, or equivalent verifiable Internet web site) less verified encumbrances. If warranted, the eligibility worker should adjust the market value for poor or unusable condition of the property before assigning a resource value. The eligibility worker shall annotate the case record to show source and computation used to determine resource value.</p>	<p>Determining the Value of Resources</p> <p>The value of nonexempt household resources at the time the application is filed must be determined from applicant statements, documents, and/or from collateral contacts when household assessment is uncertain or questionable.</p> <p>A. Valuation of Liquid Resources</p> <p>The value of liquid resources is the current redemption rate less encumbrances.</p> <p>B. Valuation of Non-Liquid Resources</p> <p>Except for real property, non-exempt non-liquid resources shall have a fair market value as determined from the best source available (such as, but not limited to, blue book, local dealer, or equivalent verifiable Internet web site) less verified encumbrances. If warranted, the eligibility worker should adjust the market value for poor or unusable condition of the property before assigning a resource value. The eligibility worker shall annotate the case record to show source and computation used to determine resource value.</p> <p>The value of real property, such as buildings, land, or vacation property, unless exempt as income producing,</p>	The removed cross-references are duplicative and are not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		The value of real property, such as buildings, land, or vacation property, unless exempt as income producing in accordance with Section 4.410, E, may be obtained by using the actual value reported by a county assessor or, if not reported, the current assessed valuation, accomplished in accordance with state law, and dividing the value by the appropriate percentage rate of assessment for real property to derive fair market value and subtracting the amount the household currently owes on the property.	may be obtained by using the actual value reported by a county assessor or, if not reported, the current assessed valuation, accomplished in accordance with state law, and dividing the value by the appropriate percentage rate of assessment for real property to derive fair market value and subtracting the amount the household currently owes on the property.		
4.408.2	Removed unnecessary cross-reference.	<p>Transfer of Resources</p> <p>At the time of application, households not eligible under expanded or basic categorical eligibility rules shall be asked to provide information regarding any resources which any household member, ineligible non-citizen, or disqualified person whose resources are being considered available to the household has transferred within the three (3) month period immediately preceding the date of application. Households that have transferred resources knowingly for the purpose of qualifying or attempting to qualify for Food Assistance benefits shall be disqualified from participation in the program for up to one (1) year from the date of discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the three (3) month period prior to application, or if they are transferred knowingly after the household is determined eligible for benefits.</p> <p>A. Eligibility for the program shall not be affected by the following transfers:</p> <p>1. Resources that would not otherwise affect eligibility, such as resources consisting of excluded person property such as furniture, or of money that when added to other household resources, totaled</p>	<p>Transfer of Resources</p> <p>At the time of application, households not eligible under expanded or basic categorical eligibility rules shall be asked to provide information regarding any resources which any household member, ineligible non-citizen, or disqualified person whose resources are being considered available to the household has transferred within the three (3) month period immediately preceding the date of application. Households that have transferred resources knowingly for the purpose of qualifying or attempting to qualify for Food Assistance benefits shall be disqualified from participation in the program for up to one (1) year from the date of discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the three (3) month period prior to application, or if they are transferred knowingly after the household is determined eligible for benefits.</p> <p>A. Eligibility for the program shall not be affected by the following transfers:</p> <p>1. Resources that would not otherwise affect eligibility, such as resources consisting of excluded person property such as furniture, or of money that when added to other household resources, totaled less at the time of the transfer than the allowable resource limits.</p>	The removed cross-reference is not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>less at the time of the transfer than the allowable resource limits.</p> <p>2. Resources that are sold or traded at, or near, fair market value.</p> <p>3. Resources that are transferred between members of the same household including ineligible non-citizens or disqualified individuals whose resources are being considered available to the household.</p> <p>4. Resources that are transferred for reasons other than qualifying or attempting to qualify for Food Assistance benefits, for example a parent placing funds into an educational trust fund described in Section 4.410, F.</p>	<p>2. Resources that are sold or traded at, or near, fair market value.</p> <p>3. Resources that are transferred between members of the same household including ineligible non-citizens or disqualified individuals whose resources are being considered available to the household.</p> <p>4. Resources that are transferred for reasons other than qualifying or attempting to qualify for Food Assistance benefits, for example a parent placing funds into an educational trust fund.</p>		
4.410(F)(3)(e)	Removed unnecessary cross-reference.	<p>F. Inaccessible Resources</p> <p>3. Any funds in a trust or transferred to a trust, and the income produced by that trust shall be considered inaccessible to the household if:</p> <p>a. The trust arrangement will not likely cease during the certification period, and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period.</p> <p>b. The trustee administering the funds is either a court, an institution, corporation or organization which is not under the direction or leadership of any household member; or an individual appointed by the court who has court imposed limitation placed on his/her use of funds which meet requirements of this section.</p> <p>c. The trust investments made on behalf of the trust do not directly involve or assist any business or</p>	<p>F. Inaccessible Resources</p> <p>3. Any funds in a trust or transferred to a trust, and the income produced by that trust shall be considered inaccessible to the household if:</p> <p>a. The trust arrangement will not likely cease during the certification period, and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period.</p> <p>b. The trustee administering the funds is either a court, an institution, corporation or organization which is not under the direction or leadership of any household member; or an individual appointed by the court who has court imposed limitation placed on his/her use of funds which meet requirements of this section.</p> <p>c. The trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a</p>	The removed cross-reference is not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>corporation under the control, direction, or influence of a household member.</p> <p>d. The funds held in irrevocable trust are either established from household's own funds and are used solely to make investments on behalf of the trust or to pay educational or medical expenses of persons named by the household creating the trust; or established from non-household funds by a non-household member.</p> <p>e. Monies which are withdrawn from trust and dividends that are or could be received by the household shall be considered as income (see Section 4.404, I).</p>	<p>household member.</p> <p>d. The funds held in irrevocable trust are either established from household's own funds and are used solely to make investments on behalf of the trust or to pay educational or medical expenses of persons named by the household creating the trust; or established from non-household funds by a non-household member.</p> <p>e. Monies which are withdrawn from trust and dividends that are or could be received by the household shall be considered as income.</p>		
4.411.1	Removed unnecessary cross-references.	<p>Treatment of Income and Resources of Disqualified and/or Sanctioned Members</p> <p>A. Individual household members may be disqualified for being ineligible non-citizens, for failure or refusal to obtain or provide a Social Security Number (SSN), for intentional Program violation/fraud, for being a fleeing felon, for failing to comply with a work requirement, or for being a sanctioned ABAWD (Able Bodied Adult Without Dependents) who has received three (3) months of Food Assistance benefits within a thirty-six (36) month period.</p> <p>B. During the period of time a household member is disqualified, the eligibility and benefit level of any remaining members shall be determined as follows:</p> <p>1. Households containing members disqualified for Intentional Program Violation or fraud, or a work requirement sanction, or classified as a fleeing felon:</p> <p>a. Income, Resources, and Deductible Expenses</p>	<p>Treatment of Income and Resources of Disqualified and/or Sanctioned Members</p> <p>A. Individual household members may be disqualified for being ineligible non-citizens, for failure or refusal to obtain or provide a Social Security Number (SSN), for intentional Program violation/fraud, for being a fleeing felon, for failing to comply with a work requirement, or for being a sanctioned ABAWD (Able Bodied Adult Without Dependents) who has received three (3) months of Food Assistance benefits within a thirty-six (36) month period.</p> <p>B. During the period of time a household member is disqualified, the eligibility and benefit level of any remaining members shall be determined as follows:</p> <p>1. Households containing members disqualified for Intentional Program Violation or fraud, or a work requirement sanction, or classified as a fleeing felon:</p> <p>a. Income, Resources, and Deductible Expenses</p> <p>The income and resources of the disqualified household</p>	The removed cross-references are not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>The income and resources of the disqualified household member(s) shall be counted in their entirety. Resources shall only be considered if the household is required to meet the resource standard as specified in Section 4.408. The allowable earned income, standard, medical, dependent care, and shelter deductions shall be allowed in their entirety.</p> <p>b. Eligibility and Benefit Level</p> <p>The disqualified member shall not be included when determining the household's size for purposes of assigning a benefit level to the household. The disqualified household member will not be included when determining the household size for comparison against any eligibility standard, which includes the gross income and net income eligibility limits or the resource eligibility limits.</p> <p>See Section 4.401.1 "for the gross income eligibility limits, Section 4.401.2 for the net income eligibility limits, and Section 4.408 for the resource eligibility limits.</p> <p>2. Households containing members disqualified for being an ineligible non-citizen, for failure or refusal to obtain or provide a Social Security Number (SSN), or sanctioned as an able bodied adult without dependents (ABAWD) who has received three (3) months of Food Assistance benefits in a thirty six (36) month period:</p> <p>a. Resources</p> <p>The resources of the disqualified and/or sanctioned member(s) shall be counted in their entirety to the remaining household members if the household is required to meet the resource standard as specified in</p>	<p>member(s) shall be counted in their entirety. Resources shall only be considered if the household is required to meet the resource standard. The allowable earned income, standard, medical, dependent care, and shelter deductions shall be allowed in their entirety.</p> <p>b. Eligibility and Benefit Level</p> <p>The disqualified member shall not be included when determining the household's size for purposes of assigning a benefit level to the household. The disqualified household member will not be included when determining the household size for comparison against any eligibility standard, which includes the gross income and net income eligibility limits or the resource eligibility limits.</p> <p>2. Households containing members disqualified for being an ineligible non-citizen, for failure or refusal to obtain or provide a Social Security Number (SSN), or sanctioned as an able bodied adult without dependents (ABAWD) who has received three (3) months of Food Assistance benefits in a thirty six (36) month period:</p> <p>a. Resources</p> <p>The resources of the disqualified and/or sanctioned member(s) shall be counted in their entirety to the remaining household members if the household is required to meet the resource standard.</p> <p>b. Income</p> <p>A pro rata share of the nonexempt income of the disqualified and/or sanctioned member(s) shall be counted as income to the remaining members. This pro rata share is calculated by dividing the income evenly among the household members, including, the disqualified member. All but the disqualified member's</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>Section 4.408.</p> <p>b. Income</p> <p>A pro rata share of the nonexempt income of the disqualified and/or sanctioned member(s) shall be counted as income to the remaining members. This pro rata share is calculated by dividing the income evenly among the household members, including, the disqualified member. All but the disqualified member's share is counted as income to the remaining household members.</p> <p>If an ineligible non-citizen is also an ineligible student and purchases and prepares food with the household, the individual's income shall be prorated under the ineligible non-citizen provisions.</p> <p>c. Deductible Expenses</p> <p>The earned income deduction shall apply to the prorated income earned by the disqualified and/or sanctioned member that is attributed to the household. That portion of the household's allowable shelter and dependent care expenses which are either paid by or billed to the disqualified member shall be divided evenly among the household members, including the disqualified member. Legally obligated child support payments are deducted before prorating income. The shelter expense will be prorated except for the standard utility allowance (SUA). The full SUA will be added to the other prorated shelter components if the household qualifies for the SUA. All but the disqualified member's share is counted as a deductible expense for the remaining household members.</p> <p>d. Eligibility and Benefit Level</p>	<p>share is counted as income to the remaining household members.</p> <p>If an ineligible non-citizen is also an ineligible student and purchases and prepares food with the household, the individual's income shall be prorated under the ineligible non-citizen provisions.</p> <p>c. Deductible Expenses</p> <p>The earned income deduction shall apply to the prorated income earned by the disqualified and/or sanctioned member that is attributed to the household. That portion of the household's allowable shelter and dependent care expenses which are either paid by or billed to the disqualified member shall be divided evenly among the household members, including the disqualified member. Legally obligated child support payments are deducted before prorating income. The shelter expense will be prorated except for the standard utility allowance (SUA). The full SUA will be added to the other prorated shelter components if the household qualifies for the SUA. All but the disqualified member's share is counted as a deductible expense for the remaining household members.</p> <p>d. Eligibility and Benefit Level</p> <p>The disqualified and/or sanctioned member shall not be included when determining the household's size for purposes of assigning a benefit level to the household. The disqualified or sanctioned household member will not be included when determining the household size for comparison against any eligibility standard, which includes the gross income, the net income eligibility limits, or the resource eligibility limits.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>The disqualified and/or sanctioned member shall not be included when determining the household's size for purposes of assigning a benefit level to the household. The disqualified or sanctioned household member will not be included when determining the household size for comparison against any eligibility standard, which includes the gross income, the net income eligibility limits, or the resource eligibility limits.</p> <p>See Section 4.401.1 for the gross income eligibility limits, Section 4.401.2 for the net income eligibility limits, and Section 4.408 for the resource eligibility limits</p>			
4.500	Removed unnecessary cross-reference and inaccurate language.	<p><b>VERIFICATION AND DOCUMENTATION</b></p> <p>A. Verification is the use of documentary evidence or a contact with a third party to confirm information and to establish the accuracy of statements on the application form, redetermination form, periodic report form, change report form, or information presented during the interview.</p> <p>B. The case record shall consist of statements and documentation regarding the sources and results of verification used to determine a household's eligibility. Such statements must be sufficiently detailed to support the determination of eligibility or ineligibility and to permit a reviewer to determine the reasonableness of the eligibility worker's determination. When making a decision of ineligibility, the case record must clearly indicate the reason for denial or termination and the verification used in making the decision. If information is considered questionable or if an alternate source of verification was requested, the reason for additional verification shall be documented in the case record.</p> <p>The case record shall also contain all correspondence</p>	<p><b>VERIFICATION AND DOCUMENTATION</b></p> <p>A. Verification is the use of documentary evidence or a contact with a third party to confirm information and to establish the accuracy of statements provided by the household.</p> <p>B. The case record shall consist of statements and documentation regarding the sources and results of verification used to determine a household's eligibility. Such statements must be sufficiently detailed to support the determination of eligibility or ineligibility and to permit a reviewer to determine the reasonableness of the eligibility worker's determination. When making a decision of ineligibility, the case record must clearly indicate the reason for denial or termination and the verification used in making the decision. If information is considered questionable or if an alternate source of verification was requested, the reason for additional verification shall be documented in the case record.</p> <p>The case record shall also contain all correspondence pertaining to fair hearings and administrative disqualification hearings.</p>	<p>Removed reference to the Change Report as this is a requirement of Change Reporting, which is no longer a reporting category as all Food Assistance households are Simplified Reporting.</p> <p>The removed cross-references are not necessary to understand the context of this citation.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>pertaining to fair hearings and administrative disqualification hearings.</p> <p>Information to retain in the case record for fair hearings shall include, at a minimum, the household's request for a fair hearing, the scheduling notice with the hearing date and time, all decisions pertaining to the fair hearing, and any exceptions filed by the county department or the household.</p> <p>Information to retain in the case record for administrative disqualification hearings (ADH) shall include, at a minimum, the notice to the individual of the alleged intentional program violation (IPV)/fraud, any notice given to the household waiving the household's right to a disqualification hearing, the scheduling notice of the disqualification hearing if the waiver is not signed and returned, all decisions issued regarding the outcome of the ADH hearing, and the disqualification notice sent to the household notifying the individual of the disqualification period.</p> <p>C. The local office shall provide each household at the time of application for initial certification, redetermination, and periodic report form with a notice that informs the household of verification requirements that the household must meet as part of the application, redetermination, or periodic report process. The notice will inform the household that the local office will assist the household in obtaining verification, provided the household is cooperating with the office. The notice shall be written in clear and simple language and shall meet bilingual requirements.</p> <p>D. The household has the primary responsibility for providing documentary evidence for required verification and to resolve questionable information. The local office shall assist the household to obtain</p>	<p>Information to retain in the case record for fair hearings shall include, at a minimum, the household's request for a fair hearing, the scheduling notice with the hearing date and time, all decisions pertaining to the fair hearing, and any exceptions filed by the county department or the household.</p> <p>Information to retain in the case record for administrative disqualification hearings (ADH) shall include, at a minimum, the notice to the individual of the alleged intentional program violation (IPV)/fraud, any notice given to the household waiving the household's right to a disqualification hearing, the scheduling notice of the disqualification hearing if the waiver is not signed and returned, all decisions issued regarding the outcome of the ADH hearing, and the disqualification notice sent to the household notifying the individual of the disqualification period.</p> <p>C. The local office shall provide each household at the time of application for initial certification, redetermination, and periodic report form with a notice that informs the household of verification requirements that the household must meet as part of the application, redetermination, or periodic report process. The notice will inform the household that the local office will assist the household in obtaining verification, provided the household is cooperating with the office. The notice shall be written in clear and simple language and shall meet bilingual requirements.</p> <p>D. The household has the primary responsibility for providing documentary evidence for required verification and to resolve questionable information. The local office shall assist the household to obtain the necessary documentation provided the household is cooperating with the local office.</p> <p>E. The household shall also be determined</p>		



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>the necessary documentation provided the household is cooperating with the local office.</p> <p>E. The household shall also be determined ineligible if it refused to cooperate in any subsequent review of its eligibility, including reviews generated by reported changes, recertifications, or as part of a quality control review in accordance with Section 4.903.42.</p> <p>Detailed information regarding the verification of individual eligibility criteria will be found in the appropriate section below.</p>	<p>ineligible if it refused to cooperate in any subsequent review of its eligibility, including reviews generated by reported changes, recertifications, or as part of a quality control review.</p>		
4.501	Removed unnecessary cross-reference.	<p><b>PRUDENT PERSON PRINCIPLE</b></p> <p>The rules contained herein are intended to be sufficiently flexible to allow the eligibility worker to exercise reasonable judgment in executing his/her responsibilities.</p> <p>In this regard, the prudent person principle may be applied. The term prudent person principle refers to reasonable judgments made by an individual in a given case. In making an eligibility decision, the eligibility worker should consider whether his/her judgment is reasonable, based on experience and knowledge of the program. The eligibility worker is also responsible for exercising reasonable judgment in determining if a given number of individuals applying for Food Assistance fit the Program's definition of a household, as defined in Section 4.100.</p>	<p><b>PRUDENT PERSON PRINCIPLE</b></p> <p>The rules contained herein are intended to be sufficiently flexible to allow the eligibility worker to exercise reasonable judgment in executing his/her responsibilities.</p> <p>In this regard, the prudent person principle may be applied. The term prudent person principle refers to reasonable judgments made by an individual in a given case. In making an eligibility decision, the eligibility worker should consider whether his/her judgment is reasonable, based on experience and knowledge of the program.</p>	The removed cross-reference is not necessary to understand the context of this citation.	
4.502	Removed unnecessary cross-reference.	<p><b>VERIFICATION REQUIREMENTS AT APPLICATION, REDETERMINATION, AND PERIODIC REPORT</b></p> <p>A. Verification Requirements at Application</p> <p>1. Expedited Service Requirements</p> <p>Only verification of the identity of the applicant is</p>	<p><b>VERIFICATION REQUIREMENTS AT APPLICATION, REDETERMINATION, AND PERIODIC REPORT</b></p> <p>A. Verification Requirements at Application</p> <p>1. Expedited Service Requirements</p> <p>Only verification of the identity of the applicant is</p>	The removed cross-references are not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>required. When an authorized representative applies on behalf of a household, the identity of both the authorized representative and the head of household shall be verified. No requirement for a specific document may be imposed. Client declaration of Social Security Number(s) and residency shall be accepted.</p> <p>Client declaration of other household circumstances shall be accepted when determining eligibility for expedited service, and verification of any client-declared information shall be postponed in accordance with Section 4.205.11, B, and verified prior to certification as outlined below. See also Section 4.205.1</p> <p>2. The following information shall be verified prior to certification:</p> <p>a. Identity of the applicant;</p> <p>b. Household's gross nonexempt income;</p> <p>c. Information available through IEVS, including Social Security Numbers (SSNs) for all household members;</p> <p>d. Non-citizen status of persons identified as non-citizens on the application;</p> <p>e. Residency, except for homeless households, or households newly arrived in the state or county for whom third-party verification cannot reasonably be obtained.</p> <p>3. The household shall be given a reasonable opportunity to submit verification of certain expenses in order to receive expense deductions. If a deductible expense must be verified and obtaining verification</p>	<p>required. When an authorized representative applies on behalf of a household, the identity of both the authorized representative and the head of household shall be verified. No requirement for a specific document may be imposed. Client declaration of Social Security Number(s) and residency shall be accepted.</p> <p>Client declaration of other household circumstances shall be accepted when determining eligibility for expedited service, and verification of any client-declared information shall be postponed, and verified prior to certification.</p> <p>2. The following information shall be verified prior to certification:</p> <p>a. Identity of the applicant;</p> <p>b. Household's gross nonexempt income;</p> <p>c. Information available through IEVS, including Social Security Numbers (SSNs) for all household members;</p> <p>d. Non-citizen status of persons identified as non-citizens on the application;</p> <p>e. Residency, except for homeless households, or households newly arrived in the state or county for whom third-party verification cannot reasonably be obtained.</p> <p>3. The household shall be given a reasonable opportunity to submit verification of certain expenses in order to receive expense deductions and exclusions. If a deductible expense must be verified and obtaining verification may delay the household's certification, the local office shall advise the household that the household's eligibility and benefit level will be</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>may delay the household's certification, the local office shall advise the household that the household's eligibility and benefit level will be determined without providing a deduction for the claimed but unverified expense. If the expense cannot be verified within thirty (30) calendar days of the date of application, the local office shall determine the household's eligibility and benefit level without providing a deduction for the unverified expense.</p> <p>a. Allowable medical expenses less reimbursement;</p> <p>b. Legally-obligated child support payments;</p> <p>c. Dependent care expenses; and,</p> <p>4. For households eligible under basic or expanded categorical eligibility rules, verification of resources, gross and net income, SSN information, sponsored non-citizen information, and residency beyond that gathered by the public assistance program that confers eligibility shall not be required unless these eligibility factors are not already collected and verified by the other program, are considered questionable, or are unavailable to the Food Assistance Program. The local office shall verify that each member receives benefits or services from the program that confers basic or expanded categorical eligibility.</p> <p>5. For households subject to an asset test, the household's written declaration of resources in excess of the resource limit is an acceptable form of verification. Verification Requirements at Redetermination and Periodic Report</p>	<p>determined without providing a deduction or exclusion for the claimed but unverified expense. If the expense cannot be verified within thirty (30) calendar days of the date of application, the local office shall determine the household's eligibility and benefit level without providing a deduction or exclusion for the unverified expense.</p> <p>a. Allowable medical expenses less reimbursement;</p> <p>b. Legally-obligated child support payments;</p> <p>c. Dependent care expenses; and,</p> <p>4. For households eligible under basic or expanded categorical eligibility rules, verification of resources, gross and net income, SSN information, sponsored non-citizen information, and residency beyond that gathered by the public assistance program that confers eligibility shall not be required unless these eligibility factors are not already collected and verified by the other program, are considered questionable, or are unavailable to the Food Assistance Program. The local office shall verify that each member receives benefits or services from the program that confers basic or expanded categorical eligibility.</p> <p>5. For households subject to an asset test, the household's written declaration of resources in excess of the resource limit is an acceptable form of verification. Verification Requirements at Redetermination and Periodic Report</p> <p>B. Verification Requirements at Redetermination and Periodic Report</p> <p>1. Eligibility factors not verified by the Income and</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>B. Verification Requirements at Redetermination and Periodic Report</p> <p>1. Eligibility factors not verified by the Income and Eligibility Verification System (IEVS) should be verified at redetermination only if they are incomplete, inaccurate, questionable, inconsistent, or outdated and would affect a household's eligibility or benefit level. Unchanged information shall not be verified unless the information is outdated.</p> <p>2. A change in total monthly earned income of one hundred dollars (\$100) or more for each member must be verified at redetermination.</p> <p>3. At redetermination, all households shall verify the following information if the source has changed or the amount has changed by more than twenty-five dollars (\$25) since the last time they were verified:</p> <p style="padding-left: 40px;">a. Changes in unearned income;</p> <p style="padding-left: 40px;">b. Allowable medical expenses SEE SECTION 4.407.61(B).;</p> <p style="padding-left: 40px;">c. Legally-obligated child support;</p> <p style="padding-left: 40px;">d. Dependent care expenses;</p> <p style="padding-left: 40px;">e. Verification of the above factors, is optional if information is unchanged or changes by twenty five dollars (\$25) or less.</p> <p>4. A reported Social Security Number(s) not verified at initial certification and newly obtained Social Security Numbers shall be verified through the IEVS OR SOLQ-I.</p> <p>5. For households subject to an asset test, the</p>	<p>Eligibility Verification System (IEVS) should be verified at redetermination only if they are incomplete, inaccurate, questionable, inconsistent, or outdated and would affect a household's eligibility or benefit level. Unchanged information shall not be verified unless the information is outdated.</p> <p>2. A change in total monthly earned income of one hundred dollars (\$100) or more for each member must be verified at redetermination.</p> <p>3. At redetermination, all households shall verify the following information if the source has changed or the amount has changed by more than twenty-five dollars (\$25) since the last time they were verified:</p> <p style="padding-left: 40px;">a. Changes in unearned income;</p> <p style="padding-left: 40px;">b. Allowable medical expenses;</p> <p style="padding-left: 40px;">c. Legally-obligated child support;</p> <p style="padding-left: 40px;">d. Dependent care expenses;</p> <p style="padding-left: 40px;">e. Verification of the above factors, is optional if information is unchanged or changes by twenty five dollars (\$25) or less.</p> <p>4. A reported Social Security Number(s) not verified at initial certification and newly obtained Social Security Numbers shall be verified through the IEVS OR SOLQ-I.</p> <p>5. For households subject to an asset test, the household's written declaration of resources in excess of the resource limit is an acceptable form of verification.</p> <p>6. If there has been a change in a deductible expense that must be verified and obtaining verification</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>household's written declaration of resources in excess of the resource limit is an acceptable form of verification.</p> <p>6. If there has been a change in a deductible expense that must be verified and obtaining verification delays the household's redetermination processing, the local office shall advise the household that the household's eligibility and benefit level will be determined without providing a deduction for the claimed but unverified expense.</p> <p>C. Verification Requirements of Reported Changes</p> <p>For the verification requirements for reported changes, see Section 4.604.1.</p>	<p>delays the household's redetermination processing, the local office shall advise the household that the household's eligibility and benefit level will be determined without providing a deduction for the claimed but unverified expense.</p>		
4.504	Removed unnecessary language.	<p>SOURCES OF VERIFICATION</p> <p>The local office shall accept any pertinent documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application, redetermination, periodic report form, or change report form. If written verification cannot be obtained, the eligibility worker shall substitute an acceptable collateral contact or a scheduled home visit. Home visits shall be used as verification only if documentation cannot be obtained and the visit is scheduled in advance with the household. Home visits are to be used on a case-by-case basis where the supplied documentation or verification is insufficient.</p>	<p>SOURCES OF VERIFICATION</p> <p>The local office shall accept any pertinent documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application, redetermination, periodic report form, or change report form. If written verification cannot be obtained, the eligibility worker shall substitute an acceptable collateral contact.</p>	<p>Information on home visits for verification is redundant here as it is described in 4.504.3.</p>	
4.504.6	Removed unnecessary language and cross-references.	<p>Information Considered Verified Upon Receipt</p> <p>A. Verified upon receipt is a term given to a state-prescribed list of specific information that comes directly from the primary source of the information and is free from question.</p>	<p>Information Considered Verified Upon Receipt</p> <p>A. Verified upon receipt is a term given to a state-prescribed list of specific information that comes directly from the primary source of the information and is free from question.</p>	<p>'D' has been removed as any overpayment can result in claims as specified in</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>B. Information that is considered verified upon receipt shall be acted upon for both simplified reporting households and non-simplified reporting households. Information considered verified upon receipt shall be acted on at the time of application, recertification, periodic report, and during a household's certification period if the information causes a change in the Food Assistance benefit amount. A household shall not be convicted of fraud for not reporting a change in information it is not required to report in accordance with Section 4.603.</p> <p>C. Information considered verified upon receipt shall be considered verified unless the office has reason to believe that the information may be inaccurate. Advance notice of adverse action shall be given when acting on information that is considered verified upon receipt, except as noted in Section 4.608.1.</p> <p>D. Administrative Error Claims may be established as a result of information considered verified upon receipt.</p> <p>E. The local office shall consider only the following information as verified upon receipt:</p> <p>1. Social Security and SSI benefit amounts obtained from SSA.</p> <p>SSI and benefit amounts obtained from the SSA are considered reported and verified on the day the information is first known to the agency, either through the IEVS, SDX, BENDEX or another automated interface of information, whichever is sooner.</p> <p>2. Death information received from the Burial Assistance program.</p>	<p>B. Information that is considered verified upon receipt shall be acted upon for both simplified reporting households and non-simplified reporting households. Information considered verified upon receipt shall be acted on at the time of application, recertification, periodic report, and during a household's certification period if the information causes a change in the Food Assistance benefit amount. A household shall not be convicted of fraud for not reporting a change in information it is not required to report.</p> <p>C. Information considered verified upon receipt shall be considered verified unless the office has reason to believe that the information may be inaccurate. Advance notice of adverse action shall be given when acting on information that is considered verified upon receipt, except as noted in Section 4.608.1.</p> <p>D. The local office shall consider only the following information as verified upon receipt:</p> <p>1. Social Security and SSI benefit amounts obtained from SSA.</p> <p>SSI and benefit amounts obtained from the SSA are considered reported and verified on the day the information is first known to the agency, either through the IEVS, SDX, BENDEX or another automated interface of information, whichever is sooner.</p> <p>2. Death information received from the Burial Assistance program.</p> <p>Death information received from the Burial Assistance program is considered reported and verified on the day the information is first known to the agency.</p> <p>3. Unemployment insurance benefits that are</p>	<p>4.801.</p> <p>The removed cross-references are not necessary to understand the context of this citation.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>Death information received from the Burial Assistance program is considered reported and verified on the day the information is first known to the agency.</p> <p>3. Unemployment insurance benefits that are reported through the IEVS and obtained through the Department of Labor and Employment (DOLE).</p> <p>The unemployment insurance benefit (UIB) information shall be considered reported and verified on the date of the IEVS notification. Advance notice of adverse action shall be given when acting on the change in information.</p> <p>4. Public Assistance (PA) benefit amounts (Colorado Works, Aid to the Needy Disabled (AND), Old Age Pension (OAP), Aid to the Blind (AB), and Colorado Supplement to SSI) obtained from the State Department.</p> <p>Such information shall be considered reported and verified on the day the public assistance benefit amount is authorized.</p> <p>5. Information that is reported and verified to a public assistance program which results in a change to the PA benefit amount and that meets the Food Assistance regulations for verification as specified in Section 4.500.</p> <p>Such information shall be considered reported and verified on the day the public assistance program processes the change and authorizes the new PA benefit amount.</p> <p>6. Child support income and expense amounts obtained through the Automated Child Support Enforcement System (ACSES).</p>	<p>reported through the IEVS and obtained through the Department of Labor and Employment (DOLE).</p> <p>The unemployment insurance benefit (UIB) information shall be considered reported and verified on the date of the IEVS notification. Advance notice of adverse action shall be given when acting on the change in information.</p> <p>4. Public Assistance (PA) benefit amounts (Colorado Works, Aid to the Needy Disabled (AND), Old Age Pension (OAP), Aid to the Blind (AB), and Colorado Supplement to SSI) obtained from the State Department.</p> <p>Such information shall be considered reported and verified on the day the public assistance benefit amount is authorized.</p> <p>5. Information that is reported and verified to a public assistance program which results in a change to the PA benefit amount and that meets the Food Assistance regulations for verification.</p> <p>Such information shall be considered reported and verified on the day the public assistance program processes the change and authorizes the new PA benefit amount.</p> <p>6. Child support income and expense amounts obtained through the Automated Child Support Enforcement System (ACSES).</p> <p>Such information is considered reported and verified on the day the information is reported through an automated interface with ACSES.</p> <p>7. Non-compliance information obtained from Employment First (EF) agencies for failure to participate in a mandated work program.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>Such information is considered reported and verified on the day the information is reported through an automated interface with ACSES.</p> <p>7. Non-compliance information obtained from Employment First (EF) agencies for failure to participate in a mandated work program.</p> <p>8. Colorado intentional Program violations (IPV).</p> <p>9. Information obtained from the Systematic Alien Verification for Entitlements (SAVE) system regarding non-citizen status.</p> <p>10. Changes in household composition that are reported and verified and result in one or more members being removed from one Food Assistance household and added to a new or existing Food Assistance household. See Section 4.304.2 for situations that involve two households requesting assistance for the same child. Adults may be removed from the household based on self-declaration, per Section 4.604, D.</p> <p>Duplicate benefits shall not be issued for a particular individual when removing that individual from one Food Assistance household and adding him/her to a new Food Assistance household.</p> <p>11. Changes in household composition that are reported and verified by child welfare agencies and result in a child being removed from one Food Assistance household and added to a new or existing Food Assistance household.</p> <p>12. The disqualification of a household member determined to be a fleeing felon or probation or parole</p>	<p>8. Colorado intentional Program violations (IPV).</p> <p>9. Information obtained from the Systematic Alien Verification for Entitlements (SAVE) system regarding non-citizen status.</p> <p>10. Changes in household composition that are reported and verified and result in one or more members being removed from one Food Assistance household and added to a new or existing Food Assistance household.</p> <p>Duplicate benefits shall not be issued for a particular individual when removing that individual from one Food Assistance household and adding him/her to a new Food Assistance household.</p> <p>11. Changes in household composition that are reported and verified by child welfare agencies and result in a child being removed from one Food Assistance household and added to a new or existing Food Assistance household.</p> <p>12. The disqualification of a household member determined to be a fleeing felon or probation or parole violator.</p>		



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		violator in accordance with Section 4.304.4.			
4.504.61	Removed unnecessary cross-reference.	<p>Information Not Considered Verified Upon Receipt</p> <p>A. Some information received from sources other than the household are not considered verified. Such information shall be subject to independent verification prior to taking adverse action to reduce, suspend, terminate, or deny a household's Food Assistance benefits during the certification period. Such information, once independently verified, shall be acted upon in accordance with Section 4.604.</p> <p>B. The following sources of information shall not be considered as verified upon receipt:</p> <ol style="list-style-type: none"> <li>1. Death information received from a source other than the Burial Assistance program.</li> <li>2. Veterans Assistance (VA) benefit amounts obtained through the IEVS.</li> <li>3. Wage data obtained through the IEVS and the DOLE.</li> <li>4. IRS income and asset information obtained through the IEVS.</li> <li>5. Information regarding railroad retirement benefits obtained through the ievs.</li> <li>6. Information received from the Public Assistance Reporting and Information System (PARIS).</li> <li>7. Prisoner information received during the certification period.</li> <li>8. Information received from the National Database of New Hires (NDNH).</li> </ol>	<p>Information Not Considered Verified Upon Receipt</p> <p>A. Some information received from sources other than the household are not considered verified. Such information shall be subject to independent verification prior to taking adverse action to reduce, suspend, terminate, or deny a household's Food Assistance benefits during the certification period.</p> <p>B. The following sources of information shall not be considered as verified upon receipt:</p> <ol style="list-style-type: none"> <li>1. Death information received from a source other than the Burial Assistance program.</li> <li>2. Veterans Assistance (VA) benefit amounts obtained through the IEVS.</li> <li>3. Wage data obtained through the IEVS and the DOLE.</li> <li>4. IRS income and asset information obtained through the IEVS.</li> <li>5. Information regarding railroad retirement benefits obtained through the ievs.</li> <li>6. Information received from the Public Assistance Reporting and Information System (PARIS).</li> <li>7. Prisoner information received during the certification period.</li> <li>8. Information received from the National Database of New Hires (NDNH).</li> <li>9. Social Security benefit amounts reported via an award letter given by the household.</li> </ol>	The removed cross-references are not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>9. Social Security benefit amounts reported via an award letter given by the household.</p> <p>10. IPV/disqualification data from another state as reported through the disqualified recipient database.</p>	<p>10. IPV/disqualification data from another state as reported through the disqualified recipient database.</p>		
4.505.2(B)(4)	Corrected grammar.	<p>4. Should the household or participant fail or refuse to cooperate in resolving the discrepancy, the individual who's SSN cannot be verified may be disqualified as having failed to provide an SSN until such time as the household/participant cooperates, unless good cause exists. Disqualification shall be effective the month following the expiration of the notice of adverse action.</p>	<p>4. Should the household or participant fail or refuse to cooperate in resolving the discrepancy, the individual whose SSN cannot be verified may be disqualified as having failed to provide an SSN until such time as the household/participant cooperates, unless good cause exists. Disqualification shall be effective the month following the expiration of the notice of adverse action.</p>	Corrected grammar.	
4.505.51	Removed unnecessary language and cross-reference.	<p>Verification of Questionable Citizenship</p> <p>A. The following guidelines shall be used in considering whether or not an applicant's statement of citizenship is questionable:</p> <p>1. The claim of citizenship is inconsistent with statements made by the applicant, or with other information on the application, recertification, periodic report form, change report form, or on previous applications.</p> <p>2. The claim of citizenship is inconsistent with information received from another source.</p> <p>B. Application of the above criteria by the eligibility worker must not result in discrimination based on race, religion, ethnic background or national origin, and groups such as migrant farm workers or American Indians shall not be targeted for special verification. The eligibility worker shall not rely on a surname, accent or appearance that seems foreign to find a claim to citizenship questionable. Nor shall the eligibility worker rely on a lack of English speaking,</p>	<p>Verification of Questionable Citizenship</p> <p>A. The following guidelines shall be used in considering whether or not an applicant's statement of citizenship is questionable:</p> <p>1. The claim of citizenship is inconsistent with statements made by the applicant.</p> <p>2. The claim of citizenship is inconsistent with information received from another source.</p> <p>B. Application of the above criteria by the eligibility worker must not result in discrimination based on race, religion, ethnic background or national origin, and groups such as migrant farm workers or American Indians shall not be targeted for special verification. The eligibility worker shall not rely on a surname, accent or appearance that seems foreign to find a claim to citizenship questionable. Nor shall the eligibility worker rely on a lack of English speaking, reading or writing ability as grounds to question a claim to citizenship.</p> <p>C. The member whose citizenship is in question</p>	<p>Removed reference to the Change Report as this is a requirement of Change Reporting, which is no longer a reporting category as all Food Assistance households are Simplified Reporting.</p> <p>The removed cross-references are not necessary to understand the context of this citation.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>reading or writing ability as grounds to question a claim to citizenship.</p> <p>C. The member whose citizenship is in question shall be ineligible to participate until proof of citizenship is obtained, except as provided in Section 4.505.6, E. Until proof of citizenship is obtained, the member whose citizenship is in question shall have his or her income, less a prorated share, and all of his or her resources considered available to any remaining household members as set forth in Section 4.411.</p> <p>D. The method used to document verification of citizenship and the result of the verification shall be included in the case record.</p>	<p>shall be ineligible to participate until proof of citizenship is obtained, except as provided in Section 4.505.6, E. Until proof of citizenship is obtained, the member whose citizenship is in question shall have his or her income, less a prorated share, and all of his or her resources considered available to any remaining household members.</p> <p>D. The method used to document verification of citizenship and the result of the verification shall be included in the case record.</p>		
4.505.6(H-I)	Removed unnecessary cross-references.	<p>Verification of Non-citizen Status</p> <p>H. If the local office determines, after complying with the requirements of this section, that the non-citizen is not in an eligible alien status, the office shall take action, including sending proper notices to the household, to terminate, deny or reduce benefits. The household will have the opportunity to request a fair hearing prior to any adverse action taking effect, pursuant to Section 4.802, et seq.</p> <p>I. If verification of eligible non-citizen status as required by Section 4.505.51 is not provided on a timely basis, the household has the option of withdrawing its application or requesting that the eligibility of the remaining household members be determined. The income and resources of the individual whose non-citizen status is unverified shall be treated in the same manner as set forth in Section 4.411 and considered available in determining the eligibility of the remaining household members. If verification of eligible non-citizen status is subsequently received the local office shall act on the</p>	<p>Verification of Non-citizen Status</p> <p>H. If the local office determines, after complying with the requirements of this section, that the non-citizen is not in an eligible alien status, the office shall take action, including sending proper notices to the household, to terminate, deny or reduce benefits. The household will have the opportunity to request a fair hearing prior to any adverse action taking effect.</p> <p>I. If verification of eligible non-citizen status is not provided on a timely basis, the household has the option of withdrawing its application or requesting that the eligibility of the remaining household members be determined. The income and resources of the individual whose non-citizen status is unverified shall be considered available in determining the eligibility of the remaining household members. If verification of eligible non-citizen status is subsequently received the local office shall act on the information as a reported change in household membership in accordance with timeliness standards. The non-citizen shall not be entitled to retroactive benefits.</p>	The removed cross-references are not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		information as a reported change in household membership in accordance with timeliness standards. The non-citizen shall not be entitled to retroactive benefits.			
4.505.61	Removed unnecessary language.	<p>USCIS Documentation of Lawful Non-citizen Status</p> <p>Non-citizens lawfully present in the United States will normally possess one of the following documents provided by the U.S. Citizenship and Immigration Service (USCIS). Possession of one of the following documents does not exempt a non-citizen from meeting the requirements set forth in Section 4.305.</p> <p>A. I-94 Arrival/Departure Record</p> <p>1. The local office shall accept the INS form I-94 as verification of non-citizen status. If the INS form I-94 does not bear any of the section annotations and the non-citizen has no other verification of non-citizen classification, the local office shall advise the non-citizen to obtain documentation from USCIS verifying the individual's non-citizen classification.</p> <p>2. If the form is annotated with Sections 207, 208, 243(h), 241(b)(3), 501(e), or 584 of the Immigration and Nationality Act or if the form is annotated with any of the following terms or a combination of the following terms, refugee, parolee, paroled or asylum, the non-citizen is considered to be in a qualified alien status and eligible for Food Assistance in accordance with Section 4.305, B, 1. The section number normally appears on the front of an I-94, but may occasionally be found on the reverse.</p> <p>3. The non-citizen shall also be advised at the eligibility interview that classification under Sections 207, 208, 243(h), 241(b)(3), 501(e) or 584 of the Immigration and Nationality Act shall result in eligible status for the period of seven years; that the non-</p>		Removed section regarding specific immigration documents. This information is provided through non-regulatory documents so it can be maintained as current when this information is modified by USCIS.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>citizen may be eligible if acceptable verification is obtained; and that the non-citizen may contact INS as stated previously, or otherwise obtain the necessary verification or, if the non-citizen wishes and signs a written consent, that the local office will contact the USCIS to obtain clarification of the non-citizen's status. If the non-citizen does not wish to contact the USCIS, the household shall be given the option of withdrawing its application or participating without that member.</p> <p>B. Resident Non-citizen Card (I-551)</p> <p>These are normally referred to as green cards. This card is usually valid indefinitely if issued before July 1990 but may contain an expiration date on the reverse side if issued to a conditional non-citizen. These cards are issued to lawful permanent resident non-citizens and contain a photograph of the non-citizen. A Resident Non-Citizen Card (I-551) issued after July 1990 is good for a period of ten (10) years.</p> <p>C. Employment Authorization Card (I-688B)</p> <p>One of several USCIS documents that indicate a non-citizen has been granted permission to work. Codes on the card indicate the person's immigration status. On the front of the card will be "274a" followed by other numbers and letters that refer to the section of the regulation authorizing employment. Section (a)(3) identifies refugees under Section 207, (a)(5) identifies asylees under Section 208, and (a)(10) identifies withholding of deportation under 243(h).</p>			
4.505.7	Removed unnecessary cross-references.	<p>Verification of Non-citizen Sponsorship</p> <p>A. The local office shall verify the following information at the time of initial application and recertification:</p>	<p>Verification of Non-citizen Sponsorship</p> <p>A. The local office shall verify the following information at the time of initial application and recertification:</p>	The removed cross-references are not necessary to understand the context of this	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>1. The income and resources of the non-citizen's sponsor and the sponsor's spouse (if living with the sponsor) at the time of the non-citizen's application for Food Assistance.</p> <p>2. The names and alien registration numbers of other non-citizens for whom the sponsor has signed an affidavit of support or similar agreement. The sponsor's income and resources shall be divided by the number of non-citizens he or she sponsors in accordance with Section 4.305.4, E.</p> <p>3. The number of dependents who are claimed or who could be claimed for federal income tax purposes of the sponsor and the sponsor's spouse.</p> <p>4. The name, address, and phone number of the non-citizen's sponsor.</p> <p>B. Until the non-citizen provides information or verification necessary to determine eligibility, the sponsored non-citizen shall be ineligible. When such verification is provided, the local office shall act on the information as a reported change in household circumstances.</p> <p>C. The eligibility of any remaining household members shall be determined. The income and resources of the ineligible non-citizen, excluding the attributed income and resources of the non-citizen's sponsor and sponsor's spouse, shall be treated in the same manner as a disqualified member as set forth in Section 4.411 and considered available in determining the eligibility and benefit level of the remaining household members.</p> <p>If the sponsored non-citizen refuses to cooperate in providing and/or verifying needed information, other</p>	<p>1. The income and resources of the non-citizen's sponsor and the sponsor's spouse (if living with the sponsor) at the time of the non-citizen's application for Food Assistance.</p> <p>2. The names and alien registration numbers of other non-citizens for whom the sponsor has signed an affidavit of support or similar agreement.</p> <p>3. The number of dependents who are claimed or who could be claimed for federal income tax purposes of the sponsor and the sponsor's spouse.</p> <p>4. The name, address, and phone number of the non-citizen's sponsor.</p> <p>B. Until the non-citizen provides information or verification necessary to determine eligibility, the sponsored non-citizen shall be ineligible. When such verification is provided, the local office shall act on the information as a reported change in household circumstances.</p> <p>C. The eligibility of any remaining household members shall be determined. The income and resources of the ineligible non-citizen, excluding the attributed income and resources of the non-citizen's sponsor and sponsor's spouse, shall be considered available in determining the eligibility and benefit level of the remaining household members.</p> <p>If the sponsored non-citizen refuses to cooperate in providing and/or verifying needed information, other adult members of the non-citizen's household shall be responsible for providing and/or verifying the information. If the information or verification is subsequently received, the local office shall act on the information as a reported change. If the same sponsor is</p>	citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		adult members of the non-citizen's household shall be responsible for providing and/or verifying the information. If the information or verification is subsequently received, the local office shall act on the information as a reported change. If the same sponsor is responsible for the entire household, the entire household is ineligible until such time as the needed information is verified. The local office must assist the non-citizen in obtaining verification provided the household is cooperating with the local office.	responsible for the entire household, the entire household is ineligible until such time as the needed information is verified. The local office must assist the non-citizen in obtaining verification provided the household is cooperating with the local office.		
4.506	Removed unnecessary cross-references and clarified language.	<p>VERIFICATION OF INCOME</p> <p>Monthly, gross nonexempt income shall be verified prior to initial certification, unless the household is entitled to expedited service and postponed verification for one month. Income is also verified at redetermination and periodic report when a household reports that the amount of income has changed more than twenty-five dollars (\$25) or the source of income has changed.</p> <p>Refer to Section 4.504 for additional forms of acceptable income verification.</p> <p>A. Responsibility</p> <p>1. Applicants are primarily responsible for furnishing income verification documents, a collateral contact, or the authorization needed to secure sufficient information to allow written or verbal verification by the eligibility worker. For public assistance (PA) recipients, the PA case record will normally be used as the source of verification.</p> <p>2. Means of income verification include pension award letters, check stubs, employer letters, and collateral contacts with employers, agencies or other persons having knowledge of the household's circumstances.</p>	<p>VERIFICATION OF INCOME</p> <p>Monthly, gross nonexempt income shall be verified prior to initial certification, unless the household is entitled to expedited service and postponed verification for one month. Income is also verified at redetermination and periodic report when a household reports that the amount of income has changed more than twenty-five dollars (\$25) or the source of income has changed.</p> <p>A. Responsibility</p> <p>1. Applicants are primarily responsible for furnishing income verification documents, a collateral contact, or the authorization needed to secure sufficient information to allow written or verbal verification by the eligibility worker. For public assistance (PA) recipients, the PA case record will normally be used as the source of verification.</p> <p>2. Means of income verification include pension award letters, check stubs, employer letters, and collateral contacts with employers, agencies or other persons having knowledge of the household's circumstances.</p> <p>3. When a collateral contact designated by the household cannot be expected to provide accurate third party verification, the local office shall ask the household</p>	<p>The removed cross-references are not necessary to understand the context of this citation.</p> <p>Clarified language around collateral contact in 4.506(F)(1).</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>3. When a collateral contact designated by the household cannot be expected to provide accurate third party verification, the local office shall ask the household to designate an acceptable collateral contact, provide an alternative form of verification or substitute a home visit.</p> <p>4. In some instances, however, all attempts to verify income may be unsuccessful because the person or organization has failed to cooperate with the household. A cooperating applicant shall not be denied solely because a third party refuses to provide verification. The eligibility worker shall, in consultation with the applicant or other sources, arrive at a figure to be used for certification purposes and annotate the household's case record with information used to make an eligibility determination.</p> <p>B. Continuing Employment</p> <p>When the applicant has continuing employment, the previous month's income is the best indication and source of verification of the amount of income the household may expect to receive. If information, such as probable salary raise, overtime pay or layoff supplied by the household or collateral contact reveals that future income will differ substantially from the previous month's income, a reasonable estimate of income shall be made based on information obtained from the household members and/or collateral contacts. The method of determining and computing income shall be fully annotated in the case record.</p> <p>C. Self-Employment</p> <p>Self-employment verification may consist of tax documents, self-employment ledgers maintained by the household, receipts, or other documents used for</p>	<p>to designate an acceptable collateral contact, provide an alternative form of verification or substitute a home visit.</p> <p>4. In some instances, however, all attempts to verify income may be unsuccessful because the person or organization has failed to cooperate with the household. A cooperating applicant shall not be denied solely because a third party refuses to provide verification. The eligibility worker shall, in consultation with the applicant or other sources, arrive at a figure to be used for certification purposes and annotate the household's case record with information used to make an eligibility determination.</p> <p>B. Continuing Employment</p> <p>When the applicant has continuing employment, the previous month's income is the best indication and source of verification of the amount of income the household may expect to receive. If information, such as probable salary raise, overtime pay or layoff supplied by the household or collateral contact reveals that future income will differ substantially from the previous month's income, a reasonable estimate of income shall be made based on information obtained from the household members and/or collateral contacts. The method of determining and computing income shall be fully annotated in the case record.</p> <p>C. Self-Employment</p> <p>Self-employment verification may consist of tax documents, self-employment ledgers maintained by the household, receipts, or other documents used for verifying and documenting the household's self-employment income and expenses. If, at the time of initial certification, a household is recently self-employed or does not have adequate documentation of the household's self-employment income and expenses, the</p>		



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>verifying and documenting the household's self-employment income and expenses. If, at the time of initial certification, a household is recently self-employed or does not have adequate documentation of the household's self-employment income and expenses, the eligibility worker shall use the best information available to determine the household's monthly income. The household shall be encouraged to keep records of income and expenses for subsequent certifications. No specific verification shall be required and the documentation provided by the household shall be accepted unless questionable. For s-corporations and limited liability corporations (LLC), see Section 4.403, F.</p> <p>D. Educational Assistance</p> <p>All educational income and financial aid is considered exempt income and does not require verification to determine a household's monthly income.</p> <p>E. Verification of Terminated Employment</p> <p>1. If information regarding the termination of employment is questionable, verification is necessary. The primary responsibility for providing verification rests with the household. If it is difficult or impossible for the household to obtain documentary evidence in a timely manner, the local office shall offer assistance.</p> <p>2. Acceptable sources of verification include, but are not limited to, the previous employer, employee associations, union representatives and grievance committees and the Colorado Department of Labor and Employment (DOLE). Whenever documentary evidence is not available, a collateral contact shall be used.</p> <p>3. If the household and the local office are</p>	<p>eligibility worker shall use the best information available to determine the household's monthly income. The household shall be encouraged to keep records of income and expenses for subsequent certifications. No specific verification shall be required and the documentation provided by the household shall be accepted unless questionable.</p> <p>D. Educational Assistance</p> <p>All educational income and financial aid is considered exempt income and does not require verification to determine a household's monthly income.</p> <p>E. Verification of Terminated Employment</p> <p>1. If information regarding the termination of employment is questionable, verification is necessary. The primary responsibility for providing verification rests with the household. If it is difficult or impossible for the household to obtain documentary evidence in a timely manner, the local office shall offer assistance.</p> <p>2. Acceptable sources of verification include, but are not limited to, the previous employer, employee associations, union representatives and grievance committees and the Colorado Department of Labor and Employment (DOLE). Whenever documentary evidence is not available, a collateral contact shall be used.</p> <p>3. If the household and the local office are unable to obtain verification for a questionable claim of resignation from employment due to discrimination practices or unreasonable demands by an employer because an employer cannot be located, the household shall not be denied.</p> <p>F. Cases of No Reported Income</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>unable to obtain verification for a questionable claim of resignation from employment due to discrimination practices or unreasonable demands by an employer because an employer cannot be located, the household shall not be denied.</p> <p>F. Cases of No Reported Income</p> <p>1. In addition to verifying reported income, the eligibility worker may have occasion to explore the possibility of unreported income. Prior to determining the eligibility of households who report no income or income so low as to place them at the maximum benefit level without consideration of deductible expenses, the eligibility worker must, through in-depth interviewing techniques, determine how the household maintains its existence and meets ongoing maintenance expenses. Collateral contacts with a person or persons knowing the household's circumstances are recommended. The existence of resources might be an explanation of how the household exists at the level of income reported.</p> <p>2. When exploring the possibility of unreported income or how the household is meeting its expenses, the local office shall not initiate a request for verification of such information, but shall explore how the household is meeting its needs through an interview. If, at the time of recertification, the local office needs to explore the possibility of unreported income or how the household is meeting its needs, the household shall be contacted by telephone to resolve the discrepancy. If the household cannot be contacted, then the interview process outlined in Section 4.204 can be initiated.</p>	<p>1. In addition to verifying reported income, the eligibility worker may have occasion to explore the possibility of unreported income. Prior to determining the eligibility of households who report no income or income so low as to place them at the maximum benefit level without consideration of deductible expenses, the eligibility worker must, through in-depth interviewing techniques, determine how the household maintains its existence and meets ongoing maintenance expenses. Collateral contact with a person or persons knowing the household's circumstances is recommended. The existence of resources might be an explanation of how the household exists at the level of income reported.</p> <p>2. When exploring the possibility of unreported income or how the household is meeting its expenses, the local office shall not initiate a request for verification of such information, but shall explore how the household is meeting its needs through an interview. If, at the time of recertification, the local office needs to explore the possibility of unreported income or how the household is meeting its needs, the household shall be contacted by telephone to resolve the discrepancy. If the household cannot be contacted, then the interview process outlined can be initiated.</p>		
4.507	Removed unnecessary cross-references and clarified	<p>VERIFICATION OF EXPENSES</p> <p>A. Verification of Dependent Care</p>	<p>VERIFICATION OF EXPENSES</p> <p>A. Verification of Dependent Care</p>	The removed cross-references are not necessary to	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
	language.	<p>Verification of dependent and child care expenses is required to grant a deduction. Refer to Section 4.407.6 if the dependent care costs qualify as a medical deduction.</p> <p>B. Verification of Shelter and Utility Costs</p> <p>1. A household's declaration of its responsibility to pay shelter and utility costs, as well as the amount the household is responsible to pay, shall be considered an acceptable source of verification, unless questionable, to grant the household a deduction for the amount the household declares it is responsible for paying. Deductions for utility allowances shall be granted in accordance with Section 4.407.31.</p> <p>2. Households that wish to claim shelter costs for a home that is unoccupied because of employment or training away from the home, illness or abandonment caused by a natural disaster or casualty loss must provide verification of actual utility costs if the costs would result in a deduction. These households are also responsible for providing verification of any other shelter costs if the cost is questionable and it would result in a deduction. The local office is not required to assist households in obtaining verification of this expense if the verification needs to be obtained from a source outside the county.</p> <p>3. If shelter expense is questionable and verification cannot be verified within thirty (30) calendar days from the date of application, the local office shall determine the household's eligibility and benefit level without providing a deduction for the unverified expense.</p> <p>4. If the household subsequently provides the</p>	<p>Verification of dependent and child care expenses is required to grant a deduction.</p> <p>B. Verification of Shelter and Utility Costs</p> <p>1. A household's declaration of its responsibility to pay shelter and utility costs, as well as the amount the household is responsible to pay, shall be considered an acceptable source of verification, unless questionable, to grant the household a deduction for the amount the household declares it is responsible for paying.</p> <p>2. Households that wish to claim shelter costs for a home that is unoccupied because of employment or training away from the home, illness or abandonment caused by a natural disaster or casualty loss must provide verification of actual utility costs if the costs would result in a deduction. These households are also responsible for providing verification of any other shelter costs if the cost is questionable and it would result in a deduction. The local office is not required to assist households in obtaining verification of this expense if the verification needs to be obtained from a source outside the county.</p> <p>3. If shelter expense is questionable and verification cannot be verified within thirty (30) calendar days from the date of application, the local office shall determine the household's eligibility and benefit level without providing a deduction for the unverified expense.</p> <p>4. If the household subsequently provides the missing verification for questionable shelter costs, the information will be handled as a reported change. The household shall be entitled to restoration of any lost benefits as a result of the disallowance of the expense which could not be verified within the thirty (30) day period, only if the client was not given at least ten (10) calendar days to provide verification or less than ten (10)</p>	<p>understand the context of this citation.</p> <p>Clarified verification of child support expenses as periodic report as well as recertification.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>missing verification for questionable shelter costs, the information will be handled as a reported change in accordance with Section 4.604. The household shall be entitled to restoration of any lost benefits as a result of the disallowance of the expense which could not be verified within the thirty (30) day period, only if the client was not given at least ten (10) calendar days to provide verification or less than ten (10) calendar days if a necessary second interview could only be scheduled between the twentieth (20th) and thirtieth (30th) day of the processing period.</p> <p>C. Verification of Medical Expenses</p> <p>1. The amount of medical bills and the portion that is reimbursable shall be verified prior to initial certification. At recertification, total medical expenses shall be verified if the source has changed or the total amount has changed more than twenty-five dollars (\$25) since the last time they were verified, or the information is incomplete, inaccurate, inconsistent, or outdated. See Sections 4.407.6 and 4.407.61 for eligibility criteria for household members entitled to these deductions.</p> <p>2. The household's monthly medical deduction for the certification period shall be based on the information reported and verified by the household, any anticipated changes in the household's medical expenses that can be reasonably expected to occur during the certification period based on available information about the recipient's medical condition public or private insurance coverage and current verified medical expenses. If the change cannot be reasonably anticipated, the household shall have the non-reimbursable portion of the medical expense considered at the time the amount of the expense or reimbursement is reported and verified.</p>	<p>calendar days if a necessary second interview could only be scheduled between the twentieth (20th) and thirtieth (30th) day of the processing period.</p> <p>C. Verification of Medical Expenses</p> <p>1. The amount of medical bills and the portion that is reimbursable shall be verified prior to initial certification. At recertification, total medical expenses shall be verified if the source has changed or the total amount has changed more than twenty-five dollars (\$25) since the last time they were verified, or the information is incomplete, inaccurate, inconsistent, or outdated.</p> <p>2. The household's monthly medical deduction for the certification period shall be based on the information reported and verified by the household, any anticipated changes in the household's medical expenses that can be reasonably expected to occur during the certification period based on available information about the recipient's medical condition public or private insurance coverage and current verified medical expenses. If the change cannot be reasonably anticipated, the household shall have the non-reimbursable portion of the medical expense considered at the time the amount of the expense or reimbursement is reported and verified.</p> <p>3. If the household reports a change in its medical expenses, the local office shall verify the change and act on the change during the certification period if it will result in an increase to the household's benefit allotment. The household shall not be contacted to verify a change discovered through another source.</p> <p>4. Households certified for twenty-four (24) months that incurred a one-time medical expense during the first twelve (12) months shall have the option of deducting the expense for one month, averaging the expense over the remainder of the first twelve (12)</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>3. Any time questionable information is received, such as the identity of the person incurring medical costs, verification shall be obtained.</p> <p>4. If the household reports a change in its medical expenses, the local office shall verify the change and act on the change during the certification period if it will result in an increase to the household's benefit allotment. If the reported change will result in a decrease to the household's benefits, the change shall not be made effective until the start of the new certification period. If a change in medical expenses is discovered from another source other than the household, the local office cannot act on the change unless it is considered verified on receipt. The household shall not be contacted to verify a change discovered through another source. If a household fails to verify changes in medical expenses, the worker shall not make the change.</p> <p>5. Households certified for twenty-four (24) months that incurred a one-time medical expense during the first twelve (12) months shall have the option of deducting the expense for one month, averaging the expense over the remainder of the first twelve (12) months of the certification period, or averaging the expense over the remainder of the certification period. One-time expenses reported after the twelfth (12th) month of the certification period will be deducted as a one-time monthly expense or averaged over the remaining months in the certification period, at the household's option.</p> <p>D. Verification of Child Support Expenses</p> <p>1. In order to receive a deduction, the household shall verify its legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays.</p>	<p>months of the certification period, or averaging the expense over the remainder of the certification period. One-time expenses reported after the twelfth (12th) month of the certification period will be deducted as a one-time monthly expense or averaged over the remaining months in the certification period, at the household's option.</p> <p>D. Verification of Child Support Expenses</p> <p>1. The local office shall accept any document that verifies the household's legal obligation to pay child support, such as a court or administrative order or legally enforceable separation agreement.</p> <p>2. The local office shall accept documentation verifying a household's actual payment of child support including, but not limited to, cancelled checks, wage withholding statements, verification of withholding from unemployment compensation and statements from the custodial parent regarding direct payments or third party payments that the noncustodial parent pays or expects to pay on behalf of the custodial parent.</p> <p>3. Documents that are accepted as verification of the household's legal obligation to pay child support shall not be accepted as verification of the household's actual monthly child support payments.</p> <p>4. In addition to requiring verification from the household, the local office shall be responsible for obtaining verification of the household's child support payments if the payments are made to the child support services agency. The local office shall give the household an opportunity to resolve any discrepancy between household verification and the verification received from the child support services agency.</p> <p>5. At recertification or periodic report, the local</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>The local office shall accept any document that verifies the household's legal obligation to pay child support, such as a court or administrative order or legally enforceable separation agreement.</p> <p>2. The local office shall accept documentation verifying a household's actual payment of child support including, but not limited to, cancelled checks, wage withholding statements, verification of withholding from unemployment compensation and statements from the custodial parent regarding direct payments or third party payments that the noncustodial parent pays or expects to pay on behalf of the custodial parent.</p> <p>3. Documents that are accepted as verification of the household's legal obligation to pay child support shall not be accepted as verification of the household's actual monthly child support payments.</p> <p>4. In addition to requiring verification from the household, the local office shall be responsible for obtaining verification of the household's child support payments if the payments are made to the child support services agency. The local office shall give the household an opportunity to resolve any discrepancy between household verification and the verification received from the child support services agency. Child support income and expense information received from the automated child support system shall be considered verified upon receipt (see Section 4.504.6).</p> <p>5. At recertification, the local office shall require the household to verify the amount of legally obligated child support that a household member pays to a non-household member.</p>	<p>office shall require the household to re-verify the amount of legally obligated child support that a household member pays to a non-household member and the actual monthly child support payments made.</p>		
4.600	Removed duplicative	ONGOING CASE MANAGEMENT		Eliminated 4.600 as all statements	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
	language.	<p>When a household is certified for Food Assistance, a certification period is assigned. During the certification period, the household is required to report certain changes in its household circumstances. If a household does not report changes as required and as a result is overpaid Food Assistance benefits, the household will be held liable for repaying any benefits it was not eligible to receive in accordance with Section 4.800.</p> <p>There are some changes that the household is not required to report but are considered known to the agency because the agency is made aware of those changes by the primary source of that information. See Sections 4.504.6 and 4.607 for these types of changes. The local office is required to act upon such information during the middle of the certification period. Claims may be established as a result of information considered verified upon receipt even if a household is not otherwise required to report such information.</p> <p>All changes are acted on in accordance with Section 4.604.</p>		are duplicative to information in other sections of this regulation.	
4.601	Removed inaccurate language and unnecessary cross-references.	<p><b>GENERAL REQUIREMENTS FOR REPORTING CHANGES</b></p> <p>A. Simplified reporting households are only required to report and verify if the household's combined gross income exceeds one hundred thirty percent (130%) of the Federal Poverty Level (FPL) for its household size.</p> <p>B. Households shall be required to report in household circumstances as outlined in Section 4.603 no later than ten (10) calendar days from the end of the calendar month in which the change occurred. The local office has up to ten (10) calendar days to act on the information from the date the change is considered</p>	<p><b>GENERAL REQUIREMENTS FOR REPORTING CHANGES</b></p> <p>A. Households are only required to report and verify if the household's combined gross income exceeds one hundred thirty percent (130%) of the Federal Poverty Level (FPL) for its household size.</p> <p>B. Households shall be required to report the increase in income no later than ten (10) calendar days from the end of the calendar month in which the change occurred. The local office has up to ten (10) calendar days to act on the information from the date the change is considered reported.</p>	Removed references to the Change Report as this is a requirement of Change Reporting, which is no longer a reporting category as all Food Assistance households are Simplified Reporting.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>reported, as outlined in Section 4.602.</p> <p>C. The household shall be allowed to report changes in person, by telephone, in writing, or through the online system. A toll-free number or a number on which collect calls will be accepted shall be indicated on all Change Report Forms.</p> <p>Changes reported by the household by telephone or in person shall be acted upon in the same manner as those reported on the Change Report Form. If reporting by mail, households will have met the reporting requirement provided the envelope is postmarked within the required ten (10) day calendar period. Public assistance (PA) households which report a change in circumstances to the PA worker shall be considered to have reported the change for Food Assistance purposes.</p> <p>D. A Change Report Form shall be provided to newly certified households at the time of certification and recertification and each time a change is submitted using the form. Households shall be notified of the receipt of the Change Report Form at the time the household is notified of an increase or decrease in benefits resulting from the reported change or at the same time the household is notified that additional verification is necessary to process the reported change.</p> <p>E. If additional verification is required to process the reported change, the household shall be notified of the verification needed and the deadline for submitting required verification to the local office. The notice shall inform the household that the change must be verified prior to action being taken by the local office if benefits are to be increased. Households shall be advised that assistance can be obtained from the local office if the household</p>	<p>C. The household shall be allowed to report changes in person, by telephone, in writing, or through the online system.</p>	<p>The removed cross-references are not necessary to understand the context of this citation.</p>	



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>experiences difficulty in obtaining required verification.</p> <p>F. When a change in household circumstances occurs in a non-simplified reporting household and the local office has determined that a household has refused to cooperate in providing verification necessary to determine eligibility, the household's eligibility shall be terminated following a Notice of Adverse Action. The household shall not be denied if there is any question as to whether it has merely failed to cooperate as opposed to refused to cooperate.</p> <p>For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to determine eligibility when a change of more than twenty-five dollars (\$25) occurs in a non-simplified reporting household. Households experiencing difficulty in obtaining necessary verification shall be assisted by the local office either in obtaining the documentary evidence or by making a collateral contact. The local office must ensure that the household was notified of the needed verification and sufficient time was allowed to obtain the verification.</p>			
4.602	Removed unnecessary cross-references.	<p>WHEN CHANGES ARE CONSIDERED REPORTED</p> <p>A. A change shall be considered to be reported as of the date the local office is notified of the change, if the required verification is received within ten (10) calendar days from the date the change is considered reported.</p> <p>If verification is obtained after the ten (10) calendar day timeframe, or during the adverse action period, the office shall consider the change reported on the day the verification is received.</p>	<p>WHEN CHANGES ARE CONSIDERED REPORTED</p> <p>A. A change shall be considered to be reported as of the date the local office is notified of the change, if the required verification is received within ten (10) calendar days from the date the change is considered reported.</p> <p>If verification is obtained after the ten (10) calendar day timeframe, or during the adverse action period, the office shall consider the change reported on the day the verification is received.</p>	The removed cross-references are not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>See Section 4.504.6 for what date is considered the change reported date for information that is considered verified upon receipt.</p> <p>B. The local office has up to ten (10) calendar days to act on a change from the date the change is considered reported.</p>			
4.603	Removed inaccurate language and unnecessary cross-references	<p>HOUSEHOLD RESPONSIBILITY TO REPORT CHANGES</p> <p>A. Requirements for All Households</p> <p>1. Applicant households shall report all changes related to their Food Assistance eligibility and benefits at the certification interview, including any changes that occurred between the date an application is submitted and the date of the interview. If a change is reported in an initial month and the application has not yet been processed, the local office shall act on the most current information.</p> <p>2. Households are required to report changes in household circumstances in accordance with the provisions of this section, no later than ten (10) calendar days from the end of the calendar month in which the change occurred. The local office has up to ten (10) calendar days to act from the date of the change is considered reported.</p> <p>3. Households are required to report all changes in household circumstances when filing a redetermination and periodic report.</p> <p>4. Able-Bodied Adults Without dependents, as defined in Section 4.100, that do not meet an exemption criteria, as outlined in Section 4.310.3, are required to report any changes in work hours that bring the individual below twenty (20) hours per week, averaged monthly.</p>	<p>HOUSEHOLD RESPONSIBILITY TO REPORT CHANGES</p> <p>A. Applicant households shall report all changes related to their Food Assistance eligibility and benefits at the certification interview, including any changes that occurred between the date an application is submitted and the date of the interview. If a change is reported in an initial month and the application has not yet been processed, the local office shall act on the most current information.</p> <p>B. Households are required to report all changes in household circumstances when filing a redetermination and periodic report.</p> <p>C. Able-Bodied Adults Without dependents, as defined in Section 4.100, that do not meet an exemption criteria, as outlined in Section 4.310.3, are required to report any changes in work hours that bring the individual below twenty (20) hours per week, averaged monthly.</p> <p>D. Households who have no gross income threshold or who are eligible to be certified with a gross income level of up to two hundred percent (200%) of the federal poverty level, as applicable to the household size, who are initially certified with income above one hundred thirty percent (130%) FPL shall not be required to report increases in the household's combined gross income during the certification period.</p>	<p>Removed references to Change Reporting, which is no longer a reporting category as all Food Assistance households are Simplified Reporting.</p> <p>The removed cross-references are not necessary to understand the context of this citation.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>B. Additional requirements for Simplified Reporting Households</p> <p>1. All households with certification periods of six (6) months and twenty-four (24) months shall be considered simplified reporting households. At redetermination, households with six (6) month certifications are required to report all changes in household circumstances. Households with twenty-four (24) month certifications are required to report all changes in household circumstances at the twelve (12) month periodic reporting period and at redetermination (see Section 4.208.1).</p> <p>2. The only change a simplified reporting household shall be required to report during the certification period is if the household's combined gross income exceeds one hundred thirty percent (130%) of the federal poverty level, as applicable to their household size. Simplified reporting households that exceed the one hundred thirty percent (130%) federal poverty level (FPL), as applicable to their household composition, will have ten (10) calendar days from the end of the month in which the household exceeded one hundred thirty percent (130%) FPL to report the change to the local office.</p> <p>3. Households who have no gross income threshold or who are eligible to be certified with a gross income level of up to two hundred percent (200%) of the federal poverty level, as applicable to the household size, who are initially certified with income above one hundred thirty percent (130%) FPL shall not be required to report increases in the household's combined gross income during the certification period. See Section 4.604 for clarification on how to act in situations when a household reports</p>	<p>E. Households who have no gross income threshold or who are eligible to be certified with a gross income level of up to two hundred percent (200%) of the FPL, as applicable to the household size, who are initially certified with income below 130% FPL are required to report when the household's combined gross income exceeds one hundred thirty percent (130%) FPL applicable to the household size. After the household reports its first increase in income above one hundred thirty percent (130%) FPL, the household shall not be required to report further increases in the household's combined gross income for the remainder of the certification period.</p> <p>F. When a household submits a recertification or periodic report form and an interview is not conducted because one has been completed in the previous twelve month period, any changes that occur after the recertification or periodic report form was submitted are not required to be reported unless the change causes the household to exceed one hundred thirty percent (130%) FPL applicable to the household size. If an interview is scheduled with the household, then the household is required to report any changes that occur between the time the household submitted the recertification application or periodic report form and the date of the interview.</p> <p>G. Upon benefit approval at initial application, redetermination and periodic change report, the household shall be provided with a notice of the gross income level that applies to its household size.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>this information.</p> <p>4. Households who have no gross income threshold or who are eligible to be certified with a gross income level of up to two hundred percent (200%) of the FPL, as applicable to the household size, who are initially certified with income below 130% FPL are required to report when the household's combined gross income exceeds one hundred thirty percent (130%) FPL applicable to the household size. After the household reports its first increase in income above one hundred thirty percent (130%) FPL, the household shall not be required to report further increases in the household's combined gross income for the remainder of the certification period.</p> <p>5. The only change a simplified reporting household must report after the interview is if the household's gross monthly income exceeds one hundred thirty percent (130%) of the FPL applicable to the household size. If a change is reported after the interview but before the application has been processed, the local office shall act on the most current information. If a change is reported after the application has been processed, then the change shall be acted upon in accordance with Section 4.604.</p> <p>6. When a simplified reporting household submits a recertification or periodic report form and an interview is not conducted because one has been completed in the previous twelve month period, any changes that occur after the recertification or periodic report form was submitted are not required to be reported unless the change causes the household to exceed one hundred thirty percent (130%) FPL applicable to the household size. If an interview is scheduled with the household, then the household is required to report any changes that occur between the</p>			

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>time the household submitted the recertification application or periodic report form and the date of the interview.</p> <p>7. Upon benefit approval at initial application, redetermination and periodic change report, the household shall be provided with a notice of the gross income level that applies to its household size.</p>			
4.604	Removed inaccurate language and unnecessary cross-references	<p><b>ACTION ON REPORTED CHANGES</b></p> <p>Changes shall be acted on in accordance with the following guidelines:</p> <p>A. General Requirements</p> <p>Changes to a household's circumstances shall be acted on prospectively and processed within ten (10) calendar days from the date the change is considered to be reported (see Section 4.602). Changes reported by households shall be documented in the Food Assistance case record to indicate the change and the date that the change was reported. If a Change Report Form was used, the local office shall provide another Change Report Form to the household and notify the household of the receipt of the change report. If the reported change causes a change to the household's allotment, a notice of action form shall be issued to inform the household of a new basis of issuance and/or a supplemental allotment. If a supplemental allotment is to be issued, the amount of the supplemental allotment shall be the difference between the allotment the household is eligible to receive, due to the reported change, and the allotment the household actually received for the current month. The household's total monthly allotment shall be increased for all subsequent months of the certification period that are affected by the change.</p> <p>B. Changes Reported at Redetermination and</p>	<p><b>ACTION ON REPORTED CHANGES</b></p> <p>Changes shall be acted on in accordance with the following guidelines:</p> <p>A. General Requirements</p> <p>Changes to a household's circumstances shall be acted on prospectively and processed within ten (10) calendar days from the date the change is considered to be reported. Changes reported by households shall be documented in the Food Assistance case record to indicate the change and the date that the change was reported. If the reported change causes a change to the household's allotment, a notice of action form shall be issued to inform the household of a new basis of issuance and/or a supplemental allotment. If a supplemental allotment is to be issued, the amount of the supplemental allotment shall be the difference between the allotment the household is eligible to receive, due to the reported change, and the allotment the household actually received for the current month. The household's total monthly allotment shall be increased for all subsequent months of the certification period that are affected by the change.</p> <p>B. Changes Reported at Redetermination and Periodic Report</p> <p>The county local office shall act on all changes reported by households filing a redetermination or periodic report.</p>	<p>Removed references to Change Reporting, which is no longer a reporting category as all Food Assistance households are Simplified Reporting.</p> <p>The removed cross-references are not necessary to understand the context of this citation.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>Periodic Report</p> <p>The county local office shall act on all changes reported by households filing a redetermination or periodic report. When a household reports information during the certification period that it was not required to report, the local office shall document the information in the case record. If the information is not acted upon because it would cause a reduction in benefits for a simplified reporting household, and it does not meet the criteria outlined in D below, the local office shall review the information at the time of the household's subsequent certification, or at the twelve (12) month periodic report for those households certified for twenty-four (24) months to determine if the change should be acted upon when processing the redetermination or periodic report.</p> <p>C. Changes Resulting In an Increase</p> <p>1. The county local office shall act on any change reported by the household that will increase benefits. The increased allotment shall be made no later than the first allotment issued ten (10) or more calendar days after the change is considered to be reported. Any increase in benefits resulting from a change shall take effect the month following the month the change is considered reported per Section 4.602. Therefore, if such a change is reported after the twentieth (20th) of a month, and it is not possible to adjust the following month's allotment before the household's next normal issuance day, a supplemental allotment (in addition to the previously authorized monthly allotment) must be issued within ten (10) calendar days from the date the change was considered to be reported. A supplemental allotment shall not be issued for the month in which the change occurred.</p>	<p>When a household reports information during the certification period that it was not required to report, the local office shall document the information in the case record. If the information is not acted upon because it would cause a reduction in benefits, and it does not meet the criteria outlined in D below, the local office shall review the information at the time of the household's subsequent certification, or at the twelve (12) month periodic report for those households certified for twenty-four (24) months to determine if the change should be acted upon when processing the redetermination or periodic report.</p> <p>C. Changes Resulting In an Increase</p> <p>1. The county local office shall act on any change reported by the household that will increase benefits. The increased allotment shall be made no later than the first allotment issued ten (10) or more calendar days after the change is considered to be reported. Any increase in benefits resulting from a change shall take effect the month following the month the change is considered reported. Therefore, if such a change is reported after the twentieth (20th) of a month, and it is not possible to adjust the following month's allotment before the household's next normal issuance day, a supplemental allotment (in addition to the previously authorized monthly allotment) must be issued within ten (10) calendar days from the date the change was considered to be reported. A supplemental allotment shall not be issued for the month in which the change occurred.</p> <p>2. Changes that result in increased Food Assistance benefits for a household must be verified by the household within ten (10) calendar days from the date the change is reported. If the household fails to provide verification, benefits shall remain at the original level until verification is obtained. Changes that result in</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>2. Changes that result in increased Food Assistance benefits for a household must be verified by the household within ten (10) calendar days from the date the change is reported. If the household fails to provide verification, benefits shall remain at the original level until verification is obtained. Changes that result in increased Food Assistance benefits for a household must be verified prior to adjusting the household's allotment.</p> <p>D. Changes Resulting in Allotment Decreases</p> <p>Changes that result in a decreased allotment shall be processed within ten (10) calendar days from the date the change is considered reported and made effective on the last day of the month in which the advance Notice of Adverse Action expires. The notice of adverse action expires eleven (11) calendar days from the date it is issued or fifteen (15) calendar days for households participating in the address confidentiality program (ACP).</p> <p>For simplified reporting households, the county local office shall not act on changes during the certification period that would decrease benefits, unless:</p> <ol style="list-style-type: none"> <li>1. The head of household requests that his/her case be closed;</li> <li>2. The head of household requests that any member be removed;</li> <li>3. An adult member requests to be removed from the case;</li> <li>4. An adult member requests that he/she and his/her children be removed from the case;</li> </ol>	<p>increased Food Assistance benefits for a household must be verified prior to adjusting the household's allotment.</p> <p>D. Changes Resulting in Allotment Decreases</p> <p>Changes that result in a decreased allotment shall be processed within ten (10) calendar days from the date the change is considered reported and made effective on the last day of the month in which the advance Notice of Adverse Action expires. The notice of adverse action expires eleven (11) calendar days from the date it is issued or fifteen (15) calendar days for households participating in the address confidentiality program (ACP).</p> <p>The county local office shall not act on changes during the certification period that would decrease benefits, unless:</p> <ol style="list-style-type: none"> <li>1. The head of household requests that his/her case be closed;</li> <li>2. The head of household requests that any member be removed;</li> <li>3. An adult member requests to be removed from the case;</li> <li>4. An adult member requests that he/she and his/her children be removed from the case;</li> <li>5. The agency has information about the household's circumstances considered verified upon receipt;</li> <li>6. There has been a change in the household's public assistance grant;</li> </ol>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>5. The agency has information about the household's circumstances considered verified upon receipt (see Section 4.504.6);</p> <p>6. There has been a change in the household's public assistance grant;</p> <p>7. The agency is acting on a mass change as outlined in Section 4.607; or,</p> <p>8. A household who has no gross income threshold or who is eligible to be certified with a gross income level up to two hundred percent (200%) FPL as applicable to the household size, which is initially certified with income below one hundred thirty percent (130%) FPL has a change in income that causes the household's combined gross monthly income during the certification period to exceed one hundred thirty percent (130%) FPL. Refer to Section 4.401.1 for a description of households that are eligible to be certified with a gross income level up to two hundred percent (200%) FPL.</p> <p>9. The agency has received information from the Prisoner Verification System or the Deceased Matching System that a household member is no longer residing in the home and the household has failed to respond to the notice of match, provided insufficient evidence to the contrary, or has confirmed the match in accordance with Section 4.604.1.B.</p> <p>E. Changes Resulting in Ineligibility</p> <p>Changes that result in the household becoming ineligible shall be processed within ten (10) calendar days from the date the change is considered reported, unless the change does not require adverse action per</p>	<p>7. The agency is acting on a mass change; or,</p> <p>8. A household who has no gross income threshold or who is eligible to be certified with a gross income level up to two hundred percent (200%) FPL as applicable to the household size, which is initially certified with income below one hundred thirty percent (130%) FPL has a change in income that causes the household's combined gross monthly income during the certification period to exceed one hundred thirty percent (130%) FPL.</p> <p>9. The agency has received information from the Prisoner Verification System or the Deceased Matching System that a household member is no longer residing in the home and the household has failed to respond to the notice of match, provided insufficient evidence to the contrary, or has confirmed the match.</p> <p>E. Changes Resulting in Ineligibility</p> <p>Changes that result in the household becoming ineligible shall be processed within ten (10) calendar days from the date the change is considered reported, unless the change does not require adverse action. Changes resulting in ineligibility shall be made effective on the last day of the month in which the Notice of Adverse Action expires. The notice of adverse action expires eleven (11) calendar days from the date it is issued or fifteen (15) calendar days for households participating in the address confidentiality program (ACP).</p> <p>F. Changes in Categorical Eligibility</p> <p>When a household reports a change during the certification period that results in it no longer meeting the criteria of the categorical eligibility tier it was originally certified, the household's eligibility must be re-evaluated</p>		



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>Section 4.608.1. Changes resulting in ineligibility shall be made effective on the last day of the month in which the Notice of Adverse Action expires. The notice of adverse action expires eleven (11) calendar days from the date it is issued or fifteen (15) calendar days for households participating in the address confidentiality program (ACP). Documentation of the eligibility determination shall be noted in the case record.</p> <p>Households that would otherwise become temporarily ineligible due to a periodic increase in recurring income or become ineligible due to another change that is not expected to continue in the subsequent month shall have their issuance suspended. Food assistance households may be placed in suspense for one month. Households not eligible for Food Assistance in the following issuance month must be discontinued from the Food Assistance Program. Households placed in suspense shall not receive a Food Assistance allotment for that issuance month. These households are considered to be eligible for the Food Assistance Program although receiving a zero allotment for the month the household is in suspense. If the suspended household again becomes eligible to receive an allotment after the month of suspense, the local office shall issue benefits on the household's normal issuance date. A new application shall not be required if the current certification period has not expired during the month of the suspense.</p> <p>F. Changes in Categorical Eligibility</p> <p>When a household reports a change during the certification period that results in it no longer meeting the criteria of the categorical eligibility tier it was originally certified under per Section 4.206, the household's eligibility must be re-evaluated using the next appropriate category. If the reported change has</p>	<p>using the next appropriate category. If the reported change has not been verified, or is considered questionable, and it cannot be determined whether basic categorical eligibility, expanded categorical eligibility, or standard eligibility criteria should be used, a request for verification shall be initiated.</p> <p>G. Changes in Household Composition</p> <p>1. Changes in household composition shall be acted on prospectively for the following month when the local office is able to affect the change prior to the determination of the household's allotment for that month. Anticipated income, deductions and other financial and non-financial criteria of the new member shall be considered in the prospective determination. The anticipated income, deductions, and other financial and non-financial criteria of a removed member shall no longer be considered when determining the household's eligibility.</p> <p>2. Individuals Disqualified During the Certification Period</p> <p>When an individual is disqualified during the household's certification period, the Food Assistance certification office shall determine the eligibility or ineligibility of the remaining household members based on information contained in the case record. If information in the case record is insufficient, additional information shall be obtained as needed.</p> <p>a. If a household's benefits are reduced or terminated within the certification period because one or more of its members was disqualified for intentional program violation/fraud, the local office shall notify the remaining members of their eligibility and benefit level at the same time the disqualified member(s) is notified of his or her disqualification.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>not been verified, or is considered questionable, and it cannot be determined whether basic categorical eligibility, expanded categorical eligibility, or standard eligibility criteria should be used, a request for verification shall be initiated per Section 4.604.1, Verification of Reported Changes.</p> <p>G. Changes in Household Composition</p> <p>1. Changes in household composition shall be acted on prospectively for the following month when the local office is able to affect the change prior to the determination of the household's allotment for that month. Anticipated income, deductions and other financial and non-financial criteria of the new member shall be considered in the prospective determination. The anticipated income, deductions, and other financial and non-financial criteria of a removed member shall no longer be considered when determining the household's eligibility (see Section 4.304). For changes in household composition that cause a decrease in the household's allotment, refer to D, "Changes Resulting in Allotment Decreases," above, for how to act on the change for a simplified reporting household.</p> <p>2. Individuals Disqualified During the Certification Period</p> <p>When an individual is disqualified during the household's certification period, the Food Assistance certification office shall determine the eligibility or ineligibility of the remaining household members based on information contained in the case record. If information in the case record is insufficient, additional information shall be obtained as needed.</p> <p>a. If a household's benefits are reduced or terminated within the certification period because one</p>	<p>b. If a household's benefits are reduced or terminated within the certification period because one or more of its members is disqualified for being an ineligible noncitizen, noncompliance with a work requirement, or for failure or refusal to obtain or provide a Social Security Number, the local office shall send a Notice of Adverse Action which informs the household of the disqualification, the reason for the disqualification, the eligibility and benefit level of the remaining members, and the actions the disqualified member must take to end the disqualification.</p> <p>H. Changes Reported During the Certification Period That the Household Is Not Required To Report</p> <p>When a household reports information during the certification period that it was not required to report, the local office shall document the information in the case record. If the information is not acted upon because it would cause a reduction in a household's benefit allotment and it does not meet the criteria outlined in D above, the local office shall review the information at the time of the household's subsequent certification, or at the twelve (12) month periodic report for those households certified for twenty-four (24) months to determine if the change should be acted upon at that time.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>or more of its members was disqualified for intentional program violation/fraud, the local office shall notify the remaining members of their eligibility and benefit level at the same time the disqualified member(s) is notified of his or her disqualification.</p> <p>b. If a household's benefits are reduced or terminated within the certification period because one or more of its members is disqualified for being an ineligible noncitizen, noncompliance with a work requirement, or for failure or refusal to obtain or provide a Social Security Number, the local office shall send a Notice of Adverse Action which informs the household of the disqualification, the reason for the disqualification, the eligibility and benefit level of the remaining members, and the actions the disqualified member must take to end the disqualification.</p> <p>H. Changes Reported During the Certification Period That the Household Is Not Required To Report</p> <p>When a household reports information during the certification period that it was not required to report, the local office shall document the information in the case record. If the information is not acted upon because it would cause a reduction in a simplified reporting household's benefit allotment and it does not meet the criteria outlined in d above, the local office shall review the information at the time of the household's subsequent certification, or at the twelve (12) month periodic report for those households certified for twenty-four (24) months to determine if the change should be acted upon at that time.</p> <p>I. Refusal to Cooperate</p> <p>The household shall be determined ineligible if it refused to cooperate in any subsequent review of its</p>			

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		eligibility, including reviews generated by reported changes, recertifications, or as part of a quality control review in accordance with Sections 4.903.4, 4.903.41, and 4.903.42. If a simplified reporting household reports a change during the certification period that it was not required to report, the local office may request verification of the change, but if the household does not provide verification, then the case cannot be denied for failing to provide the requested information			
4.604.1	Removed unnecessary cross-references.	<p>Verification of Reported Changes</p> <p>Changes that affect an allotment may require additional verification prior to taking action.</p> <p>A. Unclear Information</p> <p>1. If the local county office receives information about changes in a household's circumstances but cannot determine if or how the change will affect the household's benefits and the unclear information is:</p> <p>a. Fewer than sixty (60) days old relative to the current month of participation; and</p> <p>b. Was required to have been reported as outlined in Section 4.603; or</p> <p>c. Appears to present significantly conflicting information about the household's circumstances from that used by the agency at the time of certification, including changes to the household's categorical eligibility tier, then;</p> <p>The local office shall send a verification request notice requesting the household to provide the specific information or verification within the ten (10) calendar days plus one (1) additional calendar day for mailing time period. Households participating in the Address Confidentiality</p>	<p>Verification of Reported Changes</p> <p>Changes that affect an allotment may require additional verification prior to taking action.</p> <p>A. Unclear Information</p> <p>1. If the local county office receives information about changes in a household's circumstances but cannot determine if or how the change will affect the household's benefits and the unclear information is:</p> <p>a. Fewer than sixty (60) days old relative to the current month of participation; and</p> <p>b. Was required to have been reported per simplified reporting rules; or</p> <p>c. Appears to present significantly conflicting information about the household's circumstances from that used by the agency at the time of certification, including changes to the household's categorical eligibility tier, then;</p> <p>The local office shall send a verification request notice requesting the household to provide the specific information or verification within the ten (10) calendar days plus one (1) additional calendar day for mailing time period. Households participating in the Address Confidentiality Program (ACP) shall receive five (5)</p>	The removed cross-references are not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>Program (ACP) shall receive five (5) additional calendar days for mailing time. The local office shall offer assistance in obtaining the verification if the household cannot obtain the information.</p> <p>If the household fails or refuses to provide the verification or to request assistance with obtaining the verification within the ten (10) calendar days plus one (1) additional calendar day for mailing timeframe, or five (5) additional calendar days mailing time for ACP households, the process for closing the case shall be initiated. The Notice of Action Form shall advise the household that a change occurred that could not be acted upon, that the case is being closed, and that the household must provide the needed verification if it wishes to continue participation in the program. The household may be required to reapply if the household takes the required action after a break in benefits of more than thirty (30) calendar days.</p> <p>2. If the information is more than sixty (60) days old relative to the current month of participation, was not required to be reported per Section 4.603, or does not present significantly conflicting information from that used by the agency at the time of certification, the agency shall not act on this information or require the household to provide the information until the household's next recertification or periodic report.</p> <p>3. Changes which result in increased Food Assistance benefits for a household shall be verified prior to adjusting the household's allotment. If the household fails to provide verification, benefits shall remain at the original level until verification is obtained. Any increase in benefits resulting from a change shall take effect in accordance with the provisions outlined in Section 4.604(C)(1).</p>	<p>additional calendar days for mailing time. The local office shall offer assistance in obtaining the verification if the household cannot obtain the information.</p> <p>If the household fails or refuses to provide the verification or to request assistance with obtaining the verification within the ten (10) calendar days plus one (1) additional calendar day for mailing timeframe, or five (5) additional calendar days mailing time for ACP households, the process for closing the case shall be initiated. The Notice of Action Form shall advise the household that a change occurred that could not be acted upon, that the case is being closed, and that the household must provide the needed verification if it wishes to continue participation in the program. The household may be required to reapply if the household takes the required action after a break in benefits of more than thirty (30) calendar days.</p> <p>2. If the information is more than sixty (60) days old relative to the current month of participation, was not required to be reported, or does not present significantly conflicting information from that used by the agency at the time of certification, the agency shall not act on this information or require the household to provide the information until the household's next recertification or periodic report.</p> <p>3. Changes which result in increased Food Assistance benefits for a household shall be verified prior to adjusting the household's allotment. If the household fails to provide verification, benefits shall remain at the original level until verification is obtained.</p>		
4.605	Removed inaccurate	FAILURE TO REPORT CHANGES	FAILURE TO REPORT CHANGES	Removed references to	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
	language.	If Food Assistance benefits are over-issued because a household fails to timely report changes in household circumstances or income as required, a claim shall be established and a notice of overpayment and a repayment agreement will be mailed. If the discovery is made within the certification period, the household must be given advance notice of adverse action if its benefits are to be reduced.	If Food Assistance benefits are over-issued because a household fails to timely report changes as required, a claim shall be established and a notice of overpayment and a repayment agreement will be mailed. If the discovery is made within the certification period, the household must be given advance notice of adverse action if its benefits are to be reduced.	Change Reporting, which is no longer a reporting category as all Food Assistance households are Simplified Reporting.	
4.606(A)	Removed unnecessary cross-reference.	<p>HANDLING PUBLIC ASSISTANCE (PA) HOUSEHOLD CHANGES</p> <p>A. Households that receive public assistance benefits which report a change in circumstances to the public assistance worker shall be considered to have reported the change for Food Assistance purposes. Information that is reported and verified to a public assistance (PA) program which results in a change to the PA benefit amount and that meets the Food Assistance rules for verification shall be considered verified upon receipt (see Section 4.504.6). The date the change is considered reported and verified is the date the public assistance program processes the change and authorizes the new PA benefit amount. When acting on information considered verified upon receipt, advance notice of adverse action is required, except as noted in Section 4.608.1.</p>	<p>HANDLING PUBLIC ASSISTANCE (PA) HOUSEHOLD CHANGES</p> <p>A. Households that receive public assistance benefits which report a change in circumstances to the public assistance worker shall be considered to have reported the change for Food Assistance purposes. Information that is reported and verified to a public assistance (PA) program which results in a change to the PA benefit amount and that meets the Food Assistance rules for verification shall be considered verified upon receipt. The date the change is considered reported and verified is the date the public assistance program processes the change and authorizes the new PA benefit amount. When acting on information considered verified upon receipt, advance notice of adverse action is required, except as noted in Section 4.608.1.</p>	The removed cross-reference is not necessary to understand the context of this citation.	
4.607(B)(1)(e)(2)	Removed unnecessary cross-reference.	<p>Mass Changes</p> <p>B. Mass changes in public assistance grants, such as state-only Old Age Pension and Aid to the Needy Disabled; and Cost of Living Adjustments (COLA) and increases in federal RSDI, SSI benefits (Title XVI), and SSA (Title II).</p> <p>These mass changes shall require a Notice of Adverse Action when food assistance benefits are decreased or terminated. Such notice for these mass changes shall be provided to the household as much</p>	<p>Mass Changes</p> <p>B. Mass changes in public assistance grants, such as state-only Old Age Pension and Aid to the Needy Disabled; and Cost of Living Adjustments (COLA) and increases in federal RSDI, SSI benefits (Title XVI), and SSA (Title II).</p> <p>These mass changes shall require a Notice of Adverse Action when food assistance benefits are decreased or terminated. Such notice for these mass changes shall be provided to the household as much before the</p>	The removed cross-reference is not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>before the household's scheduled issuance date as reasonably possible, although the notice need not be given any earlier than the time required for advance Notice of Adverse Action, per Section 4.608. Mass changes shall be processed prospectively for all households.</p> <p>1. At a minimum, affected households shall be informed of:</p> <p>a. The general nature of the change;</p> <p>b. Examples of the change's effect on household's allotments;</p> <p>c. The month in which the change will take effect;</p> <p>d. The household's right to a fair hearing;</p> <p>e. The household's right to receive a continuation of benefits if the following criteria are met:</p> <p>1) The household has not specifically waived its right to a continuation of benefits;</p> <p>2) The household requests a fair hearing in accordance with Section 4.802.2, and the request for a hearing is based upon improper computation of Food Assistance eligibility or benefits, or upon misapplication or misinterpretation of state rules, or federal law or regulation.</p>	<p>household's scheduled issuance date as reasonably possible, although the notice need not be given any earlier than the time required for advance Notice of Adverse Action, per Section 4.608. Mass changes shall be processed prospectively for all households.</p> <p>1. At a minimum, affected households shall be informed of:</p> <p>a. The general nature of the change;</p> <p>b. Examples of the change's effect on household's allotments;</p> <p>c. The month in which the change will take effect;</p> <p>d. The household's right to a fair hearing;</p> <p>e. The household's right to receive a continuation of benefits if the following criteria are met:</p> <p>1) The household has not specifically waived its right to a continuation of benefits;</p> <p>2) The household requests a fair hearing in and the request for a hearing is based upon improper computation of Food Assistance eligibility or benefits, or upon misapplication or misinterpretation of state rules, or federal law or regulation.</p>		
4.608(B)	Removed unnecessary cross-references.	<p>ADVANCE NOTICE OF ADVERSE ACTION</p> <p>B. Households shall receive advance Notice of Adverse Action, giving at least ten (10) calendar days advance notice, plus one additional calendar day for mailing time, before any adverse action, such as a benefit reduction, suspension, termination or denial,</p>	<p>ADVANCE NOTICE OF ADVERSE ACTION</p> <p>B. Households shall receive advance Notice of Adverse Action, giving at least ten (10) calendar days advance notice, plus one additional calendar day for mailing time, before any adverse action, such as a benefit reduction, suspension, termination or denial,</p>	The removed cross-references are not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>becomes effective during the certification period, except as specified in Section 4.608.1. Households participating in the address confidentiality program (ACP) shall receive five (5) additional calendar days for mailing time.</p> <p>When acting on a change in accordance with Section 4.604, if the ten (10) calendar day advance notice period, plus the additional calendar day(s) for mailing time, can be given in the month the Notice of Adverse Action is sent, the notice shall be effective on the last day of the month the notice is sent.</p> <p>If the ten (10) calendar day advance notice period, plus the additional calendar day(s) for mailing, extends into the following month, the notice shall be effective on the last day of the month the notice expires. The notice of adverse action expires eleven (11) calendar days from the date it is issued or fifteen (15) calendar days for households participating in the ACP. The notice shall explain the reason for the proposed action and the date the action becomes effective.</p> <p>If the advance notice period ends on a weekend or holiday and a request for a fair hearing and continuation of benefits are received the business day after the weekend or holiday, the request shall be considered timely received.</p> <p>For changes that result in a decreased allotment or ineligibility, the local office shall issue a notice of adverse action within ten (10) calendar days of the date the change is considered reported, which will affect the next regularly scheduled allotment after the month in which the advance Notice of Adverse Action period expires (see Section 4.602).</p>	<p>becomes effective during the certification period, except as specified in Section 4.608.1. Households participating in the address confidentiality program (ACP) shall receive five (5) additional calendar days for mailing time.</p> <p>When acting on a change in accordance, if the ten (10) calendar day advance notice period, plus the additional calendar day(s) for mailing time, can be given in the month the Notice of Adverse Action is sent, the notice shall be effective on the last day of the month the notice is sent.</p> <p>If the ten (10) calendar day advance notice period, plus the additional calendar day(s) for mailing, extends into the following month, the notice shall be effective on the last day of the month the notice expires. The notice of adverse action expires eleven (11) calendar days from the date it is issued or fifteen (15) calendar days for households participating in the ACP. The notice shall explain the reason for the proposed action and the date the action becomes effective.</p> <p>If the advance notice period ends on a weekend or holiday and a request for a fair hearing and continuation of benefits are received the business day after the weekend or holiday, the request shall be considered timely received.</p> <p>For changes that result in a decreased allotment or ineligibility, the local office shall issue a notice of adverse action within ten (10) calendar days of the date the change is considered reported, which will affect the next regularly scheduled allotment after the month in which the advance Notice of Adverse Action period expires.</p>		
4.608.1(G-L)	Removed unnecessary cross-references	Changes Not Requiring Advance Notice of Adverse Action	Changes Not Requiring Advance Notice of Adverse Action	The removed cross-references are not	



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
	and updated inconsistent language.	<p>Advance Notice of Adverse Action may be given, but is not required in the following situations:</p> <p>G. The certification office has elected to assign a longer certification period to a household certified on an expedited basis and for whom verification was postponed, as detailed in Section 4.205.1, provided the household has received prior written notice that verification may result in a reduction in benefits.</p> <p>H. As a result of the facility's loss of state or USDA/FNS authorization, the local office terminates eligibility of those residents in a drug or alcoholic treatment center or group living arrangement, who are certified with the facility acting as authorized representative.</p> <p>I. A household member is disqualified for an intentional program violation/fraud or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member. The noticing requirements for an intentional program violation/fraud are contained in Section 4.803.7.</p> <p>J. Converting a household from cash and/or Food Assistance repayment for claims to allotment reduction as a result of a failure to make agreed-on repayments.</p> <p>K. The household was issued a repayment agreement for a claim and failed to respond. For households participating in the program that do not respond to the repayment agreement, benefit recoupment will be initiated.</p> <p>L. A change that is reported at redetermination for a household certified for six (6) months, or at the 12-month mid-point for a household certified for</p>	<p>Advance Notice of Adverse Action may be given, but is not required in the following situations:</p> <p>G. The certification office has elected to assign a longer certification period to a household certified on an expedited basis and for whom verification was postponed, provided the household has received prior written notice that verification may result in a reduction in benefits.</p> <p>H. As a result of the facility's loss of state or USDA/FNS authorization, the local office terminates eligibility of those residents in a drug or alcoholic treatment center or group living arrangement, who are certified with the facility acting as authorized representative.</p> <p>I. A household member is disqualified for an intentional program violation/fraud or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member.</p> <p>J. Converting a household from cash and/or Food Assistance repayment for claims to allotment reduction as a result of a failure to make agreed-on repayments.</p> <p>K. The household was issued a repayment agreement for a claim and failed to respond. For households participating in the program that do not respond to the repayment agreement, benefit recoupment will be initiated.</p> <p>L. A change that is reported at redetermination for a household certified for six (6) months, or at periodic report for a household certified for twenty-four (24) months, which results in a decrease to the household's Food Assistance allotment.</p>	<p>necessary to understand the context of this citation.</p> <p>The language 'the 12-month mid-point for a household certified for twenty-four (24) months' was updated to periodic report in order to remain consistent with other regulatory references.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		twenty-four (24) months, which results in a decrease to the household's Food Assistance allotment. Such changes shall be processed in accordance with the requirements and timeframes in Sections 4.209.1, and 4.210.			
4.609.1	Removed unnecessary cross-references and outdated language.	<p>GENERAL ELIGIBILITY GUIDELINES [Rev. eff. 2/1/16]</p> <p>A. Effective January 1, 2017, households that receive Food Assistance and Colorado Works basic cash assistance that become ineligible for continued receipt of Colorado Works basic cash assistance as a result of changes in household income are eligible to receive Transitional Food Assistance (TFA), as provided for within this section. Colorado works diversion payments are not considered basic cash assistance. Colorado works basic cash assistance is defined in Section 3.601 of the Code of Colorado Regulations (9 CCR 2503-6).</p> <p>B. Households that are eligible to receive Transitional Food Assistance will have the Food Assistance benefit amount continued for five (5) months. The household's Food Assistance allotment will be continued in an amount based on what the household received prior to when the household's income made them ineligible for Colorado Works basic cash assistance. Only the following four (4) changes will be acted upon when determining the Food Assistance allotment that is to be continued.</p> <ol style="list-style-type: none"> <li>The loss of the Colorado Works cash grant;</li> <li>Changes in household composition that result in a household member leaving and applying for Food Assistance in another household;</li> <li>Updates to the Food Assistance eligibility standards that change each October 1 as a result of</li> </ol>	<p>GENERAL ELIGIBILITY GUIDELINES [Rev. eff. 2/1/16]</p> <p>A. Households that receive Food Assistance and Colorado Works basic cash assistance that become ineligible for continued receipt of Colorado Works basic cash assistance as a result of changes in household income are eligible to receive Transitional Food Assistance (TFA), as provided for within this section. Colorado works diversion payments are not considered basic cash assistance. Colorado works basic cash assistance is defined in Section 3.601 of the Code of Colorado Regulations (9 CCR 2503-6).</p> <p>B. Households that are eligible to receive Transitional Food Assistance will have the Food Assistance benefit amount continued for five (5) months. The household's Food Assistance allotment will be continued in an amount based on what the household received prior to when the household's income made them ineligible for Colorado Works basic cash assistance. Only the following four (4) changes will be acted upon when determining the Food Assistance allotment that is to be continued.</p> <ol style="list-style-type: none"> <li>The loss of the Colorado Works cash grant;</li> <li>Changes in household composition that result in a household member leaving and applying for Food Assistance in another household;</li> <li>Updates to the Food Assistance eligibility standards that change each October 1 as a result of the annual cost-of-living adjustments; and,</li> </ol>	The removed cross-references are not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>the annual cost-of-living adjustments (see Section 4.607); and,</p> <p>4. Imposing an intentional program violation disqualification.</p> <p>C. When the Food Assistance benefit amount is continued, the household's existing certification period shall end, and the household shall be assigned a new five (5) month certification period. The recertification requirements located within Section 4.209 that would normally apply when the household's certification period ends must be postponed until the end of the five (5) month transitional certification period.</p> <p>D. Households who are denied or not eligible for Transitional Food Assistance must have continued eligibility and benefit level determined in accordance with Section 4.604.</p> <p>E. The following households are not eligible to receive Transitional Food Assistance:</p> <p>1. Households leaving the Colorado Works program due to a Colorado Works sanction; or,</p> <p>2. Households that are ineligible to receive Food Assistance because all individuals in the household meet one of the following criteria:</p> <p>a. Disqualified for intentional program violation in accordance with Section 4.803;</p> <p>b. Ineligible for failure to comply with a work requirement in accordance with Section 4.310;</p> <p>c. Ineligible student in accordance with Section 4.306;</p>	<p>4. Imposing an intentional program violation disqualification.</p> <p>C. When the Food Assistance benefit amount is continued, the household's existing certification period shall end, and the household shall be assigned a new five (5) month certification period. The recertification requirements that would normally apply when the household's certification period ends must be postponed until the end of the five (5) month transitional certification period.</p> <p>D. Households who are denied or not eligible for Transitional Food Assistance must have continued eligibility and benefit level determined in accordance with Section 4.604.</p> <p>E. The following households are not eligible to receive Transitional Food Assistance:</p> <p>1. Households leaving the Colorado Works program due to a Colorado Works sanction; or,</p> <p>2. Households that are ineligible to receive Food Assistance because all individuals in the household meet one of the following criteria:</p> <p>a. Disqualified for intentional program violation;</p> <p>b. Ineligible for failure to comply with a work;</p> <p>c. Ineligible student;</p> <p>d. Ineligible non-citizen;</p> <p>e. Disqualified for failing to provide information necessary for making a determination of eligibility or for completing any subsequent review of its eligibility;</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>d. Ineligible non-citizen in accordance with Section 4.305.1;</p> <p>e. Disqualified for failing to provide information necessary for making a determination of eligibility in accordance with Section 4.500 or for completing any subsequent review of its eligibility in accordance with Sections 4.209 and 4.210;</p> <p>f. Disqualified for receiving Food Assistance benefits in more than one household in the same month in accordance with Section 4.803.3;</p> <p>g. Disqualified for being a fleeing felon in accordance with Section 4.304.4;</p> <p>h. Able-bodied adults without dependents who fail to comply with the requirements of Section 4.310.</p>	<p>f. Disqualified for receiving Food Assistance benefits in more than one household in the same month;</p> <p>g. Disqualified for being a fleeing felon;</p> <p>h. Able-bodied adults without dependents who fail to comply with the requirements of Section 4.310.</p>		
4.609.2	Removed duplicate language.	<p>HOUSEHOLD CHANGES DURING THE TRANSITIONAL PERIOD [Rev. eff. 2/1/16]</p> <p>A. The household is not required to report any changes during the five (5) month transitional period, including changes that put the household over one hundred thirty percent (130%) of the Federal Poverty Level (FPL).</p> <p>B. Household changes that occur in the middle of the transitional period, including information considered verified upon receipt as outlined in Section 4.504.6, E, shall not be acted upon, with the following exceptions:</p> <p>1. Changes in household composition that result in a household member applying for Food Assistance in another household. The local office must remove any income, resources, and deductible expenses clearly attributable to the departing member.</p>	<p>HOUSEHOLD CHANGES DURING THE TRANSITIONAL PERIOD [Rev. eff. 2/1/16]</p> <p>A. The household is not required to report any changes during the five (5) month transitional period, including changes that put the household over one hundred thirty percent (130%) of the Federal Poverty Level (FPL).</p>	Information in 'B' is repetitive as it is included in 4.609.1(B).	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>2. Updates to the Food Assistance eligibility standards that change each October 1 as a result of the annual cost-of-living adjustments (see Section 4.607).</p> <p>3. Imposing an intentional program violation disqualification.</p>			
4.609.3	Removed unnecessary cross-reference.	<p>CLOSING THE TRANSITIONAL PERIOD [Rev. eff. 2/1/16]</p> <p>In the final month of the transitional period, the household must undergo the recertification process to determine the household's continued eligibility and benefit amount (see Section 4.209).</p>	<p>CLOSING THE TRANSITIONAL PERIOD [Rev. eff. 2/1/16]</p> <p>In the final month of the transitional period, the household must undergo the recertification process to determine the household's continued eligibility and benefit amount.</p>	The removed cross-reference is not necessary to understand the context of this citation.	
4.609.4	Removed unnecessary cross-references.	<p>HOUSEHOLDS WHO RETURN TO COLORADO WORKS DURING THE TRANSITIONAL PERIOD [Rev. eff. 2/1/16]</p> <p>If a household receiving Transitional Food Assistance returns to Colorado Works during the transitional period, the local office shall complete the recertification process for Food Assistance to determine the household's continued eligibility and benefit amount (see Section 4.209). If the household remains eligible for Food Assistance, the household shall be assigned a new certification period in accordance with Section 4.208.1.</p>	<p>HOUSEHOLDS WHO RETURN TO COLORADO WORKS DURING THE TRANSITIONAL PERIOD [Rev. eff. 2/1/16]</p> <p>If a household receiving Transitional Food Assistance returns to Colorado Works during the transitional period, the local office shall complete the recertification process for Food Assistance to determine the household's continued eligibility and benefit amount. If the household remains eligible for Food Assistance, the household shall be assigned a new certification period.</p>	The removed cross-references are not necessary to understand the context of this citation.	
4.609.5	Removed unnecessary cross-references and added clarifying language.	<p>HOUSEHOLDS WHO REAPPLY FOR FOOD ASSISTANCE DURING THE TRANSITIONAL PERIOD [Rev. eff. 2/1/16]</p> <p>A. At any time during the transitional period, the household may submit an application for recertification to determine if the household is eligible for a higher Food Assistance allotment. In determining if the household is eligible for a higher allotment, all changes in household circumstances shall be acted upon.</p>	<p>HOUSEHOLDS WHO REAPPLY FOR FOOD ASSISTANCE DURING THE TRANSITIONAL PERIOD [Rev. eff. 2/1/16]</p> <p>A. At any time during the transitional period, the household may submit an application for recertification to determine if the household is eligible for a higher Food Assistance allotment. In determining if the household is eligible for a higher allotment, all changes in household circumstances shall be acted upon.</p> <p>1. If the household is determined eligible for a</p>	<p>The removed cross-references are not necessary to understand the context of this citation.</p> <p>Removed citation regarding timeframes for a</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>1. If the household is determined eligible for a benefit lower than its transitional benefit, the local office shall encourage the household to withdraw its application for recertification and continue to receive transitional benefits. If the household chooses not to withdraw its application, the local office shall deny the application and allow the transitional period to run its course.</p> <p>2. If the household is eligible for benefits higher than its transitional benefit amount, the increased benefits shall take effect with the first day of the month following the month in which the reapplication was received. The transitional certification period shall be ended, and the household shall be assigned a new certification period that begins with the first day of the month following the month in which the household submitted the application for recertification. The new certification period shall be assigned in accordance with Section 4.208.1</p> <p>B. If a household applies for recertification during its transitional period, the local office shall observe the following procedures:</p> <p>1. The local office must schedule and complete an interview in accordance with 4.204 and 4.209, D.</p> <p>2. The local office must provide the household with a notice of required verification in accordance with Section 4.500, C, and provide the household a minimum of ten (10) calendar days to provide the required verification in accordance with Section 4.209.1, D, 3.</p> <p>3. Households shall be notified of their eligibility or ineligibility as soon as possible, but no later than thirty (30) calendar days following the date the application was filed.</p>	<p>benefit lower than its transitional benefit, the local office shall encourage the household to withdraw its application for recertification and continue to receive transitional benefits. If the household chooses not to withdraw its application, the local office shall deny the application and allow the transitional period to run its course.</p> <p>2. If the household is eligible for benefits higher than its transitional benefit amount, the increased benefits shall take effect with the first day of the month following the month in which the reapplication was received. The transitional certification period shall be ended, and the household shall be assigned a new certification period that begins with the first day of the month following the month in which the household submitted the application for recertification.</p> <p>B. If a household applies for recertification during its transitional period, the local office shall observe the following procedures:</p> <p>1. The local office must schedule and complete an interview if one has not been completed within the previous 12 months.</p> <p>2. The local office must provide the household with a notice of required verification, and provide the household a minimum of ten (10) calendar days to provide the required verification.</p> <p>3. Households shall be notified of their eligibility or ineligibility as soon as possible, but no later than thirty (30) calendar days following the date the application was filed.</p> <p>a. If the local office does not determine a household's eligibility within thirty (30) calendar days following the application date, then the local office shall</p>	<p>required interview and replaced with language clarifying this requirement.</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>a. If the local office does not determine a household's eligibility within thirty (30) calendar days following the application date, then the local office shall continue processing the application while continuing the household's transitional benefits. See Section 4.205.3 for delays in processing.</p> <p>b. If the application process cannot be completed because the household failed to take a required action, the local office may deny the application at that time or at the end of the thirty (30) calendar days.</p> <p>c. If the household is determined to be ineligible, the local office shall deny the household's application for recertification and continue the household's transitional benefits to the end of the transitional benefit period, at which time the local office shall recertify the household in accordance with Section 4.209.</p> <p>C. Applications for recertification submitted in the fifth month of the transitional period must be processed in accordance with recertification procedures contained within Section 4.209.</p>	<p>continue processing the application while continuing the household's transitional benefits.</p> <p>b. If the application process cannot be completed because the household failed to take a required action, the local office may deny the application at that time or at the end of the thirty (30) calendar days.</p> <p>c. If the household is determined to be ineligible, the local office shall deny the household's application for recertification and continue the household's transitional benefits to the end of the transitional benefit period, at which time the local office shall recertify the household in accordance with Section 4.209.</p>		
4.609.6(E-F)	Removed unnecessary cross-references.	<p>TRANSITIONAL NOTICE REQUIREMENTS [Rev. eff. 2/1/16]</p> <p>When a household is approved for Transitional Food Assistance, the household shall be notified of the following information:</p> <p>E. A statement informing the household that it is not required to report and provide verification for any changes in household circumstances until the household completes the recertification process as required by Section 4.609.3; and,</p>	<p>TRANSITIONAL NOTICE REQUIREMENTS [Rev. eff. 2/1/16]</p> <p>When a household is approved for Transitional Food Assistance, the household shall be notified of the following information:</p> <p>E. A statement informing the household that it is not required to report and provide verification for any changes in household circumstances until the household completes the recertification process and,</p> <p>F. A statement informing the household that the</p>	The removed cross-references are not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		F. A statement informing the household that the local office will not act on changes that the household reports during the transitional period prior to the deadline specified in Section 4.609.3, E, and that if the household experiences a decrease in income or an increase in expenses or household size prior to that deadline, the household should apply for recertification.	local office will not act on changes that the household reports during the transitional period and that if the household experiences a decrease in income or an increase in expenses or household size prior to that deadline, the household should apply for recertification.		
4.702.1	Removed unnecessary cross-references and added clarifying language.	<p>Eligibility for Restoration of Lost Benefits</p> <p>A. To be eligible for restored benefits, the household must have had its Food Assistance benefits wrongfully delayed, denied, or terminated. Delay shall mean that an eligibility determination was not accomplished within the prescribed time limits set forth in Sections 4.205, 4.209.1 or 4.210.</p> <p>B. A restoration of benefits is warranted when a household has received fewer benefits than it was eligible to receive due to:</p> <ol style="list-style-type: none"> <li>1. An error by the local office;</li> <li>2. A court decision overturning or reversing a disqualification for intentional program violation; or,</li> <li>3. A determination by a court that the household should have received more benefits than it received during a given issuance period.</li> </ol> <p>C. In the event that a restoration is warranted according to the provisions in paragraph b of this section, benefits shall be restored for not more than twelve (12) months prior to whichever of the following occurred first:</p> <ol style="list-style-type: none"> <li>1. The date the local office was notified, in writing or orally, by the household or by another person or agency that a household received fewer</li> </ol>	<p>Eligibility for Restoration of Lost Benefits</p> <p>A. To be eligible for restored benefits, the household must have had its Food Assistance benefits wrongfully delayed, denied, or terminated. Delay shall mean that an eligibility determination was not accomplished within processing timeframe standards.</p> <p>B. A restoration of benefits is warranted when a household has received fewer benefits than it was eligible to receive due to:</p> <ol style="list-style-type: none"> <li>1. An error by the local office;</li> <li>2. A court decision overturning or reversing a disqualification for intentional program violation; or,</li> <li>3. A determination by a court that the household should have received more benefits than it received during a given issuance period.</li> </ol> <p>C. In the event that a restoration is warranted, benefits shall be restored for not more than twelve (12) months prior to whichever of the following occurred first:</p> <ol style="list-style-type: none"> <li>1. The date the local office was notified, in writing or orally, by the household or by another person or agency that a household received fewer</li> </ol>	<p>The removed cross-references are not necessary to understand the context of this citation.</p> <p>Removed citation regarding timeframes and replaced with language clarifying this requirement.</p>	



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>benefits than it was eligible to receive;</p> <p>2. The date the local office discovers through the normal course of business that an error occurred which lead to the loss of benefits for a specific household; or,</p> <p>3. The date the household requested a fair hearing to contest the adverse action that resulted in the loss.</p> <p>When determining the months for which a household may be entitled to restorations, month one (1) shall be the month prior to the month in which the error was discovered.</p> <p>D. If the restoration is the result of a judicial action, the amount to be restored shall be determined as follows:</p> <p>1. If the judicial action is the first action the household has taken to obtain a restoration of lost benefits, then benefits shall be restored for a period of not more than twelve (12) months prior to the date the court action was initiated.</p> <p>2. If the judicial action is a review of an action taken by the local office, the benefits shall be restored for a period of no more than twelve (12) months prior to the first of either:</p> <p>a. The date the local office was notified by the household or by another person or agency in writing, or orally, of the possible loss to the household, or,</p> <p>b. The date the household requested a fair hearing.</p>	<p>2. The date the local office discovers through the normal course of business that an error occurred which lead to the loss of benefits for a specific household; or,</p> <p>3. The date the household requested a fair hearing to contest the adverse action that resulted in the loss.</p> <p>When determining the months for which a household may be entitled to restorations, month one (1) shall be the month prior to the month in which the error was discovered.</p> <p>D. If the restoration is the result of a judicial action, the amount to be restored shall be determined as follows:</p> <p>1. If the judicial action is the first action the household has taken to obtain a restoration of lost benefits, then benefits shall be restored for a period of not more than twelve (12) months prior to the date the court action was initiated.</p> <p>2. If the judicial action is a review of an action taken by the local office, the benefits shall be restored for a period of no more than twelve (12) months prior to the first of either:</p> <p>a. The date the local office was notified by the household or by another person or agency in writing, or orally, of the possible loss to the household, or,</p> <p>b. The date the household requested a fair hearing.</p> <p>E. In no case shall benefits be restored for more than twelve (12) months prior to the date the local office is notified of, or discovers, the loss. Benefits shall be restored even if the household is currently ineligible.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>E. In no case shall benefits be restored for more than twelve (12) months prior to the date the local office is notified of, or discovers, the loss. Benefits shall be restored even if the household is currently ineligible.</p> <p>F. In the event that the State orders a reduction or cancellation of benefits, those households whose allotments are reduced or cancelled as a result of the enactment of those procedures are not entitled to restoration of lost benefits unless the Secretary of Agriculture orders the State to restore reduced or cancelled benefits to affected households at a later date. If the Secretary of Agriculture directs the State to restore reduced or cancelled benefits, the local office shall work promptly to issue such benefits.</p>	<p>F. In the event that the State orders a reduction or cancellation of benefits, those households whose allotments are reduced or cancelled as a result of the enactment of those procedures are not entitled to restoration of lost benefits. If the Secretary of Agriculture directs the State to restore reduced or cancelled benefits, the local office shall work promptly to issue such benefits.</p>		
4.702.02	Removed redundant language.	<p>Disputed Benefits</p> <p>A. If a household does not agree with any action taken by the local office to restore lost benefits or the amount of benefits determined to have been lost, the household may request a fair hearing within ninety (90) calendar days of the notice to the household of entitlement to a restoration. If such a request is made before or during the time period for which lost benefits are being restored, the local office will continue to issue the under-issued benefits pending the decision of the fair hearing. Once a final decision is reached, the local office shall restore benefits in accordance with the decision.</p> <p>B. If the household requests a fair hearing to dispute the local office's determination that the household is not eligible for restored benefits, restored benefits for the period in question shall not be issued to the household while awaiting the final agency decision.</p> <p>C. Benefits lost more than twelve (12) months</p>	<p>Disputed Benefits</p> <p>A. If a household does not agree with any action taken by the local office to restore lost benefits or the amount of benefits determined to have been lost, the household may request a fair hearing within ninety (90) calendar days of the notice to the household of entitlement to a restoration. If such a request is made before or during the time period for which lost benefits are being restored, the local office will continue to issue the under-issued benefits pending the decision of the fair hearing. Once a final decision is reached, the local office shall restore benefits in accordance with the decision.</p> <p>B. If the household requests a fair hearing to dispute the local office's determination that the household is not eligible for restored benefits, restored benefits for the period in question shall not be issued to the household while awaiting the final agency decision.</p>	Language in 'C' is repetitive in Section 4.702.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		prior to the date that the local office was notified that a household received less benefits than it was eligible to receive shall not be eligible for restoration.			
4.702.4	Removed unnecessary cross-reference.	<p>Errors by the Social Security Administration (SSA) Office</p> <p>The local office shall restore to the household any benefits lost as the result of an error by the local office or by the Social Security Administration through joint processing. Lost benefits shall be restored in accordance with Section 4.702.1.</p> <p>Benefits shall be restored back to the date of an applicant's release from a public institution if, while in the institution, the applicant jointly applied for SSI and Food Assistance, but the local office was not notified on a timely basis of the applicant's release.</p>	<p>Errors by the Social Security Administration (SSA) Office</p> <p>The local office shall restore to the household any benefits lost as the result of an error by the local office or by the Social Security Administration through joint processing.</p> <p>Benefits shall be restored back to the date of an applicant's release from a public institution if, while in the institution, the applicant jointly applied for SSI and Food Assistance, but the local office was not notified on a timely basis of the applicant's release.</p>	The removed cross-reference is not necessary to understand the context of this citation.	
4.703	Removed unnecessary cross-references.	<p>CALCULATING LOST BENEFITS</p> <p>After correcting the loss for future months and excluding those months which occurred prior to the twelve (12) month restriction outlined above at 4.702.2, C, the following method will be used to calculate the amount of benefits to be restored:</p> <p>A. If the household was eligible but received an incorrect allotment, the loss of benefits shall be calculated only for those months the household participated. If the loss was caused by an incorrect delay, denial, or termination of benefits, the month the loss initially occurred will be calculated as follows:</p> <p>1. If an eligible household's application was erroneously denied, the month the loss initially occurred shall be the month of application or for an eligible household filing a timely reapplication, the first month of the new certification period.</p> <p>2. If an eligible household's application was</p>	<p>CALCULATING LOST BENEFITS</p> <p>After correcting the loss for future months and excluding those months which occurred prior to the twelve (12) month restriction, the following method will be used to calculate the amount of benefits to be restored:</p> <p>A. If the household was eligible but received an incorrect allotment, the loss of benefits shall be calculated only for those months the household participated. If the loss was caused by an incorrect delay, denial, or termination of benefits, the month the loss initially occurred will be calculated as follows:</p> <p>1. If an eligible household's application was erroneously denied, the month the loss initially occurred shall be the month of application or for an eligible household filing a timely reapplication, the first month of the new certification period.</p> <p>2. If an eligible household's application was delayed, the months for which benefits may be lost shall</p>	The removed cross-references are not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>delayed, the months for which benefits may be lost shall be calculated in accordance with Section 4.702.1.</p> <p>3. If a household's benefits were erroneously terminated, the month the loss initially occurred shall be the first month benefits were not received as a result of the erroneous action.</p> <p>B. After computing the date the loss initially occurred, the loss shall be calculated for each month subsequent to that date until either the first month the error is corrected or the first month the household is found ineligible, not to exceed twelve (12) months prior to the date the loss was discovered per Section 4.702.2, C.</p>	<p>be calculated.</p> <p>3. If a household's benefits were erroneously terminated, the month the loss initially occurred shall be the first month benefits were not received as a result of the erroneous action.</p> <p>B. After computing the date the loss initially occurred, the loss shall be calculated for each month subsequent to that date until either the first month the error is corrected or the first month the household is found ineligible, not to exceed twelve (12) months prior to the date the loss was discovered.</p>		
4.801	Removed unnecessary language.	<p>CLAIMS AGAINST HOUSEHOLDS</p> <p>A claim shall be established, in accordance with the provisions of this section, when a household is over-issued benefits. An over-issuance means the amount by which Food Assistance benefits issued to a household exceeds the amount the household was eligible to receive.</p>	<p>CLAIMS AGAINST HOUSEHOLDS</p> <p>A claim shall be established when a household is over-issued benefits. An over-issuance means the amount by which Food Assistance benefits issued to a household exceeds the amount the household was eligible to receive.</p>	The removed statement was a reference to the information included in the section.	
4.801.1	Removed unnecessary cross-reference.	<p>Classification of Claims</p> <p>Claims shall be classified as follows:</p> <p>A. "Agency Error Claims" - A claim shall be handled as an agency error claim if the over-issuance is caused by an error on the part of the local office. Instances that may result in an agency error claim include, but are not limited to, the following:</p> <p>1. The local office failed to take prompt action on a change reported by the household;</p> <p>2. The local office incorrectly computed the household's income or deductions, or otherwise</p>	<p>Classification of Claims</p> <p>Claims shall be classified as follows:</p> <p>A. "Agency Error Claims" - A claim shall be handled as an agency error claim if the over-issuance is caused by an error on the part of the local office. Instances that may result in an agency error claim include, but are not limited to, the following:</p> <p>1. The local office failed to take prompt action on a change reported by the household;</p> <p>2. The local office incorrectly computed the household's income or deductions, or otherwise</p>	The removed cross-reference is not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>assigned an incorrect allotment;</p> <p>3. The local office continued to provide a household Food Assistance benefits after its certification period expired without a redetermination of eligibility in accordance with Sections 4.209 and 4.209.1.</p> <p>4. The local office failed to provide a household a reduced level of Food Assistance benefits when its public assistance grant changed.</p>	<p>assigned an incorrect allotment;</p> <p>3. The local office continued to provide a household Food Assistance benefits after its certification period expired without a redetermination of eligibility.</p> <p>4. The local office failed to provide a household a reduced level of Food Assistance benefits when its public assistance grant changed.</p>		
4.801.2(A)(2)(a)	Corrected grammar.	<p>2. Claims shall be established for benefits that are trafficked. The trafficking of benefits means:</p> <p>a. The buying, selling, stealing, or otherwise effecting an exchange of Food Assistance benefits issued and accessed via Electronic Benefit Transfer cards, card numbers and personal identification numbers (PINS), or by manual voucher and signature for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone; or,</p>	<p>2. Claims shall be established for benefits that are trafficked. The trafficking of benefits means:</p> <p>a. The buying, selling, stealing, or otherwise affecting an exchange of Food Assistance benefits issued and accessed via Electronic Benefit Transfer cards, card numbers and personal identification numbers (PINS), or by manual voucher and signature for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone; or,</p>	Corrected grammar from effecting to affecting.	
4.801.3(C)	Removed unnecessary cross-references and outdated language.	<p>C. Agency Error and Inadvertent Household Error Claims</p> <p>1. If the household received a larger allotment than it was entitled to receive, the local office shall establish a claim against the household that is equal to the difference between the allotment that the household received and the actual allotment it should have received, in accordance with the thresholds outlined in Section 4.801.2, A. Benefits authorized under Colorado Electronic Benefits Transfer System (CO/EBTS) shall be used to calculate the claim.</p> <p>After calculating the amount of a claim and establishing claims in accordance with the thresholds</p>	<p>C. Agency Error and Inadvertent Household Error Claims</p> <p>1. If the household received a larger allotment than it was entitled to receive, the local office shall establish a claim against the household that is equal to the difference between the allotment that the household received and the actual allotment it should have received. Benefits authorized under Colorado Electronic Benefits Transfer System (CO/EBTS) shall be used to calculate the claim.</p> <p>After calculating the amount of a claim and establishing claims, the local office may offset the amount of the claim against any amounts which have not yet been</p>	<p>The removed cross-references are not necessary to understand the context of this citation.</p> <p>Removed references to Change Reporting, which is no longer a reporting category as all Food Assistance</p>	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>outlined in Section 4.801.2, A, the local office may offset the amount of the claim against any amounts which have not yet been restored to the household. See Section 4.702. Expungements and any return of benefits that occur shall be used to offset the amount of the claim.</p> <p>2. The claim may also be offset against restored benefits owed to:</p> <p>a. Any household that contains a member who was an adult member of the original household;</p> <p>b. Any household that contains an authorized representative that caused the overpayment or trafficking.</p> <p>c. In no circumstance, may the local office collect more than the amount of the claim.</p> <p>3. The Food Assistance office shall calculate the amount of an agency error or inadvertent household error claim back to the month the over-issuance occurred. However, in no event shall the amount of the administrative error claim be calculated for any period prior to one (1) year from the date the local office was notified, in writing or orally, or discovered through the normal course of business, that an error occurred which led to the household receiving more benefits than it was entitled to receive. All other claims shall be established for a period no greater than six years from the date the agency discovered the overpayment. See Section 4.801.2, B, for when a claim is considered discovered. .</p> <p>4. For households eligible under basic categorical eligibility, a claim shall only be determined when it can be computed on the basis of changed household net income and/or household size. A claim</p>	<p>restored to the household. Expungements and any return of benefits that occur shall be used to offset the amount of the claim.</p> <p>2. The claim may also be offset against restored benefits owed to:</p> <p>a. Any household that contains a member who was an adult member of the original household;</p> <p>b. Any household that contains an authorized representative that caused the overpayment or trafficking.</p> <p>c. In no circumstance, may the local office collect more than the amount of the claim.</p> <p>3. The Food Assistance office shall calculate the amount of an agency error or inadvertent household error claim back to the month the over-issuance occurred. However, in no event shall the amount of the administrative error claim be calculated for any period prior to one (1) year from the date the local office was notified, in writing or orally, or discovered through the normal course of business, that an error occurred which led to the household receiving more benefits than it was entitled to receive. All other claims shall be established for a period no greater than six years from the date the agency discovered the overpayment.</p> <p>4. For households eligible under basic categorical eligibility, a claim shall only be determined when it can be computed on the basis of changed household net income and/or household size. A claim shall not be established if there was not a change in net income and/or household size.</p> <p>If a household receives both Temporary Assistance for Needy Families (TANF) and Food Assistance and mis-</p>	households are Simplified Reporting.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>shall not be established if there was not a change in net income and/or household size.</p> <p>If a household receives both Temporary Assistance for Needy Families (TANF) and Food Assistance and mis-reports information to TANF in accordance with the TANF reporting requirements, and the mis-report of information to TANF resulted in the household being over paid TANF or ineligible for TANF, any resulting Food Assistance claim should be based on the actual TANF issued.</p> <p>5. The correct allotment shall be calculated using the same methods applied to an actual certification. The twenty percent (20%) earned income deduction shall not be applied to that part of any earned income that the household failed to report in a timely manner when this act is the basis for the claim; therefore, any portion of the claim that is due to earned income being reported in an untimely manner will be calculated without allowing the twenty percent (20%) earned income deduction. The actual circumstances of the household shall be used to calculate the claim. In instances when a claim is caused by the household's failure to report information as required, the amount of the claim is based on the allotment difference from what the household actually received compared to what the household would have received if the household would have reported the information as required. For example, if a simplified reporting household did not report income at initial application as required, the income used to calculate the overpayment would be the income that the household actually received in the month of application, as this would have been used to determine the household's ongoing monthly amount. Actual income received each subsequent month is not required to calculate each month of the claim, as any fluctuation in monthly income that was received by the</p>	<p>reports information to TANF in accordance with the TANF reporting requirements, and the mis-report of information to TANF resulted in the household being over paid TANF or ineligible for TANF, any resulting Food Assistance claim should be based on the actual TANF issued.</p> <p>5. The correct allotment shall be calculated using the same methods applied to an actual certification. The twenty percent (20%) earned income deduction shall not be applied to that part of any earned income that the household failed to report in a timely manner when this act is the basis for the claim; therefore, any portion of the claim that is due to earned income being reported in an untimely manner will be calculated without allowing the twenty percent (20%) earned income deduction. The actual circumstances of the household shall be used to calculate the claim. In instances when a claim is caused by the household's failure to report information as required, the amount of the claim is based on the allotment difference from what the household actually received compared to what the household would have received if the household would have reported the information as required. For example, if a simplified reporting household did not report income at initial application as required, the income used to calculate the overpayment would be the income that the household actually received in the month of application, as this would have been used to determine the household's ongoing monthly amount. Actual income received each subsequent month is not required to calculate each month of the claim, as any fluctuation in monthly income that was received by the household after the initial month of application was not required to be reported by the household. If the household failed to report a change in household circumstances that would have resulted in an increase in benefits during the time period of the claim, the local office shall act on the change in information as of the date the change was reported to</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>household after the initial month of application was not required to be reported by the household. If the household failed to report a change in household circumstances that would have resulted in an increase in benefits during the time period of the claim, the local office shall act on the change in information as of the date the change was reported to the local office in accordance with Section 4.602.</p> <p>6. In cases involving reported changes, the local office shall establish the claim for each month in which the error would have affected the household's Food Assistance allotment.</p> <p>a. In cases involving household failure to report a change in circumstances within the required timeframes, the first (1st) month affected by the household's failure to report shall be the first (1st) month in which the change would have been effective had it been timely reported. However, in no event shall the determination of the first (1st) month in which the change would have been effective be any later than two (2) months from the month in which the change occurred. For purposes of calculating the claim, the local office shall assume that the change would have been reported properly and timely acted upon by the local office.</p> <p>b. If the household timely reported a change but the local office failed to act on the change within the required timeframes, the first (1st) month affected by the local office's failure to act shall be the first (1st) month the office would have made the change effective had it acted timely. If a Notice of Adverse Action was required, the local office shall assume, for the purpose of calculating the claim, that the Notice of Adverse Action period described within Section 4.608 would have expired without the household requesting a fair hearing.</p>	<p>the local office.</p> <p>6. When a household certified below the 130% FPL fails to report an increase in household income over 130% FPL, the local office shall establish the claim for each month in which an over-issuance of Food Assistance has occurred.</p> <p>a. In cases involving household failure to report an increase in income within the required timeframes, the first (1st) month affected by the household's failure to report shall be the first (1st) month in which the change would have been effective had it been timely reported. However, in no event shall the determination of the first (1st) month in which the change would have been effective be any later than two (2) months from the month in which the change occurred. For purposes of calculating the claim, the local office shall assume that the change would have been reported properly and timely acted upon by the local office.</p> <p>b. If the household timely reported an increase in income but the local office failed to act on the change within the required timeframes, the first (1st) month affected by the local office's failure to act shall be the first (1st) month the office would have made the change effective had it acted timely. If a Notice of Adverse Action was required, the local office shall assume, for the purpose of calculating the claim, that the Notice of Adverse Action period would have expired without the household requesting a fair hearing.</p>		



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
4.801.3(D)	Removed unnecessary cross-reference.	<p>D. Intentional Program Violation Claims</p> <p>1. Prior to a waiver or consent agreement being signed or the determination of intentional program violation/fraud, the claim being pursued as an intentional program violation claim shall be pursued as an inadvertent household error claim. Thresholds prescribed in Section 4.801.2, A, do not apply to IPV/fraud claims.</p> <p>2. For each month that a household received an over-issuance due to an act of intentional program violation/fraud, the local office shall determine the correct amount of Food Assistance benefits, if any, the household was entitled to receive. The amount of the intentional program violation/fraud claim shall be calculated back to the month the intentional program violation occurred. However, in no event shall the amount of the claim be calculated for any period prior to six (6) years from the date the intentional program violation was discovered. If the household member is determined to have intentionally failed to report a change in its household's circumstances, the claim shall be established for each month in which the failure to report would have affected the household's Food Assistance allotment.</p> <p>3. Once the amount of the intentional program violation/fraud claim is established, the local office shall offset the claim against any amount of lost benefits that have not yet been restored to the household.</p>	<p>D. Intentional Program Violation Claims</p> <p>1. Prior to a waiver or consent agreement being signed or the determination of intentional program violation/fraud, the claim being pursued as an intentional program violation claim shall be pursued as an inadvertent household error claim.</p> <p>2. For each month that a household received an over-issuance due to an act of intentional program violation/fraud, the local office shall determine the correct amount of Food Assistance benefits, if any, the household was entitled to receive. The amount of the intentional program violation/fraud claim shall be calculated back to the month the intentional program violation occurred. However, in no event shall the amount of the claim be calculated for any period prior to six (6) years from the date the intentional program violation was discovered. If the household member is determined to have intentionally failed to report a change in its household's circumstances, the claim shall be established for each month in which the failure to report would have affected the household's Food Assistance allotment.</p> <p>3. Once the amount of the intentional program violation/fraud claim is established, the local office shall offset the claim against any amount of lost benefits that have not yet been restored to the household.</p>	The removed cross-reference is not necessary to understand the context of this citation.	
4.801.4(A-B)	Removed unnecessary cross-references.	<p>A. Claim Liability</p> <p>2. Initiating Collection Action</p> <p>a. Local offices shall initiate collection action against any and all of the adult members or persons connected to the household at the time an over-</p>	<p>A. Claim Liability</p> <p>2. Initiating Collection Action</p> <p>a. Local offices shall initiate collection action against any and all of the adult members or persons connected to the household at the time an over-issuance</p>	The removed cross-references are not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>issuance occurred. Under no circumstances shall the office collect more than the amount of the claim.</p> <p>b. The local office may pursue collection action against any household that has a member that was connected to the household that received or created an over- issuance.</p> <p>c. The local office shall initiate collection action for an unpaid or partially paid IPV claim even if collection action was previously initiated against the household while the claim was being handled as an inadvertent household error claim. Collection action shall be initiated unless the household has already repaid the over-issuance as a result of an inadvertent household error demand letter or the local office has documentation that shows the household cannot be located.</p> <p>d. Local offices can suspend or terminate collection activity in accordance with Sections 4.801.42 and 4.801.43.</p> <p>B. Postponing Collection Action</p> <p>Collection action on inadvertent household error claims may be postponed in cases where an over-issuance is being referred to an administrative disqualification hearing or a court of appropriate jurisdiction, and the local office determines that collection action will prejudice the case.</p> <p>For cases in which the household is appealing an agency error or inadvertent household error claim, collection action shall be suspended pending a final decision (see Section 4.801.42). A household's appeal may include, but not be limited to, the establishment of the claim, the amount of the claim, and/or the household's liability to repay the claim.</p>	<p>occurred. Under no circumstances shall the office collect more than the amount of the claim.</p> <p>b. The local office may pursue collection action against any household that has a member that was connected to the household that received or created an over- issuance.</p> <p>c. The local office shall initiate collection action for an unpaid or partially paid IPV claim even if collection action was previously initiated against the household while the claim was being handled as an inadvertent household error claim. Collection action shall be initiated unless the household has already repaid the over-issuance as a result of an inadvertent household error demand letter or the local office has documentation that shows the household cannot be located.</p> <p>B. Postponing Collection Action</p> <p>Collection action on inadvertent household error claims may be postponed in cases where an over-issuance is being referred to an administrative disqualification hearing or a court of appropriate jurisdiction, and the local office determines that collection action will prejudice the case.</p> <p>For cases in which the household is appealing an agency error or inadvertent household error claim, collection action shall be suspended pending a final decision. A household's appeal may include, but not be limited to, the establishment of the claim, the amount of the claim, and/or the household's liability to repay the claim.</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
4.801.4(D)	Removed unnecessary language.	<p>D. Negotiating Payment Plans</p> <p>Households participating in the program are subject to allotment reduction in accordance with Section 4.801.41, B, unless the claim is being collected at a higher amount.</p> <p>If a household is not participating in the program, then the local office shall negotiate a payment schedule with the household, as outlined in this section, for repayment of any amounts of the claim not repaid through a lump sum payment.</p> <p>If a household is subject to allotment reduction, then a repayment agreement is not necessary unless the household wants to make voluntary payments in addition to the allotment reduction or elects to make monthly payments in amount greater than what would be repaid through allotment reduction.</p>	<p>D. Negotiating Payment Plans</p> <p>Households participating in the program are subject to allotment reduction in accordance with Section 4.801.41, B, unless the claim is being collected at a higher amount.</p> <p>If a household is not participating in the program, then the local office shall negotiate a payment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment.</p> <p>If a household is subject to allotment reduction, then a repayment agreement is not necessary unless the household wants to make voluntary payments in addition to the allotment reduction or elects to make monthly payments in amount greater than what would be repaid through allotment reduction.</p>	Removed 'as outlined in this section'. This statement is an unnecessary statement.	
4.801.4(E)(2)	Removed unnecessary cross-references.	<p>2. Claims shall not be considered delinquent under the following circumstances:</p> <p>a. If another Food Assistance claim for the same household is currently being paid, either through an installment agreement or an allotment reduction, and the local office expects to begin collection on the claim once the prior claim(s) is settled;</p> <p>b. If collection is coordinated through the court system and the local office has limited control over collection action;</p> <p>c. If a household timely requests a fair hearing on the existence or amount of the claim and the local office suspends collection action pending a final agency decision. A claim awaiting a fair hearing decision shall not be considered delinquent (see Section 4.801.42).</p>	<p>2. Claims shall not be considered delinquent under the following circumstances:</p> <p>a. If another Food Assistance claim for the same household is currently being paid, either through an installment agreement or an allotment reduction, and the local office expects to begin collection on the claim once the prior claim(s) is settled;</p> <p>b. If collection is coordinated through the court system and the local office has limited control over collection action;</p> <p>c. If a household timely requests a fair hearing on the existence or amount of the claim and the local office suspends collection action pending a final agency decision. A claim awaiting a fair hearing decision shall not be considered delinquent.</p>	The removed cross-references are not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		If the hearing officer determines that a claim does in fact exist against the household, the household shall be sent another demand letter. Delinquency shall be based on the due date of this subsequent demand letter and not on the initial pre-hearing demand letter sent to the household. If the hearing officer determines that a claim does not exist, the claim is deleted shall be terminated and all collection activity ceased (see Section 4.801.43).	If the hearing officer determines that a claim does in fact exist against the household, the household shall be sent another demand letter. Delinquency shall be based on the due date of this subsequent demand letter and not on the initial pre-hearing demand letter sent to the household. If the hearing officer determines that a claim does not exist, the claim is deleted shall be terminated and all collection activity ceased.		
4.801.41(B)(2)	Removed unnecessary cross-reference.	<p>2. The household's allotment will be reduced based on the recoupment amounts for each type of claim, unless a payment schedule has been negotiated with the household. One- and two-person households receiving a minimum allotment, which is eight percent (8%) of the maximum allotment for a one-person household, shall be reduced to a lower benefit level in accordance with Section 4.801.41, C, 2.</p> <p>The local office may collect on a claim by invoking benefit allotment reduction on two (2) separate households for the same claim. However, the local office is not required to perform this simultaneous reduction.</p>	<p>2. The household's allotment will be reduced based on the recoupment amounts for each type of claim, unless a payment schedule has been negotiated with the household. One- and two-person households receiving a minimum allotment, which is eight percent (8%) of the maximum allotment for a one-person household, shall be reduced to a lower benefit level.</p> <p>The local office may collect on a claim by invoking benefit allotment reduction on two (2) separate households for the same claim. However, the local office is not required to perform this simultaneous reduction.</p>	The removed cross-reference is not necessary to understand the context of this citation.	
4.801.41(D)	Removed unnecessary cross-references.	<p>D. Offset Against Taxpayer's State Income Tax Refund</p> <p>1. In accordance with Sections 26-2-133, C.R.S. and 39-21-108, C.R.S., the state and county departments may recover overpayments of public assistance benefits through the offset (intercept) of a taxpayer's state income tax refund. Rent rebates are subject to the offset procedure. This method may be used to recover overpayments that have been:</p> <p>a. Determined by final agency action, or,</p>	<p>D. Offset Against Taxpayer's State Income Tax Refund</p> <p>1. The state and county departments may recover overpayments of public assistance benefits through the offset (intercept) of a taxpayer's state income tax refund. Rent rebates are subject to the offset procedure. This method may be used to recover overpayments that have been:</p> <p>a. Determined by final agency action, or,</p> <p>b. Ordered by a court as restitution, or,</p>	The removed cross-references are not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>b. Ordered by a court as restitution, or,</p> <p>c. Reduced to judgment.</p> <p>2. Pre-Offset Notice</p> <p>Prior to certifying the taxpayer's name and other information to the Department of Revenue, the Colorado Department of Human Services shall notify the taxpayer in writing at his or her last known address that the state intends to use the tax refund offset to recover the overpayment. The pre-offset notice shall include the name of the local office claiming the overpayment, a reference to Food Assistance as the source of the overpayment, and the current balance owed.</p> <p>3. Household Objection to Pre-Offset Notice</p> <p>The taxpayer is entitled to object to the offset by filing a request for a local-level conference or state-level hearing within thirty (30) calendar days from the date that the state department mails its pre-offset notice to the taxpayer. In all other respects, the procedures applicable to such hearings shall be those that are stated in Section 4.802.6. At the hearing on the offset, the county department or Administrative Law Judge shall not consider whether an overpayment has occurred, but may consider, if raised by the taxpayer in his or her request for a hearing, whether:</p> <p>a. The taxpayer was properly notified of the overpayment;</p> <p>b. The taxpayer is the person who owes the overpayment;</p> <p>c. The amount of the overpayment has</p>	<p>c. Reduced to judgment.</p> <p>2. Pre-Offset Notice</p> <p>Prior to certifying the taxpayer's name and other information to the Department of Revenue, the Colorado Department of Human Services shall notify the taxpayer in writing at his or her last known address that the state intends to use the tax refund offset to recover the overpayment. The pre-offset notice shall include the name of the local office claiming the overpayment, a reference to Food Assistance as the source of the overpayment, and the current balance owed.</p> <p>3. Household Objection to Pre-Offset Notice</p> <p>The taxpayer is entitled to object to the offset by filing a request for a local-level conference or state-level hearing within thirty (30) calendar days from the date that the state department mails its pre-offset notice to the taxpayer. At the hearing on the offset, the county department or Administrative Law Judge shall not consider whether an overpayment has occurred, but may consider, if raised by the taxpayer in his or her request for a hearing, whether:</p> <p>a. The taxpayer was properly notified of the overpayment;</p> <p>b. The taxpayer is the person who owes the overpayment;</p> <p>c. The amount of the overpayment has been paid or is incorrect;</p> <p>d. The debt created by the overpayment has been discharged through bankruptcy;</p>		

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>been paid or is incorrect;</p> <p>d. The debt created by the overpayment has been discharged through bankruptcy;</p> <p>e. Other special circumstances exist as described in Section 4.801.42.</p>	<p>e. Other special circumstances exist as described in Section 4.801.42.</p>		
4.802	Removed unnecessary cross-references.	<p>APPEAL PROCESS</p> <p>Any household that is aggrieved by any action of the local office affecting the household's participation in the Program may appeal by requesting a local-level dispute resolution conference and/or a state-level fair hearing.</p> <p>The right of a household to a local-level dispute resolution conference and state-level hearing is primarily to ensure that a proposed eligibility determination or action is valid; to protect the person against an erroneous action concerning benefits; and to ensure reasonable promptness of local office action. The individual may choose to request a local-level dispute resolution conference or bypass the dispute resolution process and appeal directly to the Colorado Department of Personnel and Administration, Office of Administrative Courts (OAC), for a state-level fair hearing.</p> <p>The Office of Administrative Courts may deny fair hearings to those households that are disputing a mass change, as outlined in Section 4.607 or the fact that a statewide reduction, cancellation, or suspension was ordered per the provisions contained within Section 4.904.4. In such instances, the OAC is not required to hold a fair hearing unless the request is based on the household's belief that the rules were misapplied.</p>	<p>APPEAL PROCESS</p> <p>Any household that is aggrieved by any action of the local office affecting the household's participation in the Program may appeal by requesting a local-level dispute resolution conference and/or a state-level fair hearing.</p> <p>The right of a household to a local-level dispute resolution conference and state-level hearing is primarily to ensure that a proposed eligibility determination or action is valid; to protect the person against an erroneous action concerning benefits; and to ensure reasonable promptness of local office action. The individual may choose to request a local-level dispute resolution conference or bypass the dispute resolution process and appeal directly to the Colorado Department of Personnel and Administration, Office of Administrative Courts (OAC), for a state-level fair hearing.</p> <p>The Office of Administrative Courts may deny fair hearings to those households that are disputing a mass change or the fact that a statewide reduction, cancellation, or suspension was ordered. In such instances, the OAC is not required to hold a fair hearing unless the request is based on the household's belief that the rules were misapplied.</p>	The removed cross-references are not necessary to understand the context of this citation.	
4.802.2(C)	Removed	C. Establishing a Claim on Benefits That Were	C. Establishing a Claim on Benefits That Were	The removed	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
	unnecessary cross-reference.	Continued  If the local office action is upheld by the hearing decision, a claim shall be established against the household for all over-issuances. This includes over-issuances due to the household receiving a continuation of benefits that the household was determined not eligible to receive. Such claims shall be classified as an inadvertent household error claim (see Section 4.801.1).	Continued  If the local office action is upheld by the hearing decision, a claim shall be established against the household for all over-issuances. This includes over-issuances due to the household receiving a continuation of benefits that the household was determined not eligible to receive. Such claims shall be classified as an inadvertent household error claim.	cross-reference is not necessary to understand the context of this citation.	
4.802.21(A)	Removed unnecessary cross-reference.	Households Disputing Restoration of Lost Benefits  A. The household has the right to appeal through the fair hearing process if the household disagrees with any action taken to grant or restore lost benefits (see Section 4.702.2).	Households Disputing Restoration of Lost Benefits  A. The household has the right to appeal through the fair hearing process if the household disagrees with any action taken to grant or restore lost benefits.	The removed cross-reference is not necessary to understand the context of this citation.	
4.802.51(B)	Removed unnecessary cross-reference.	B. Scheduling a Conference  1. To the extent possible, the local-level dispute resolution conference shall be scheduled and conducted within the prior notice period. If the local office cannot conduct the conference within this period, for whatever reason, the adverse action in dispute shall be delayed until a conference can be held, unless the household waives continuation of benefits.  2. If a conference is requested to attempt to resolve a contested denial of expedited service pursuant to Section 4.205.1, it shall be scheduled within two (2) working days of the receipt of the request for a conference unless the household requests that the conference be held later. Prior notice is not required.  3. The local office shall provide reasonable notice to the household of the scheduled time and location for the conference, or the time of the	B. Scheduling a Conference  1. To the extent possible, the local-level dispute resolution conference shall be scheduled and conducted within the prior notice period. If the local office cannot conduct the conference within this period, for whatever reason, the adverse action in dispute shall be delayed until a conference can be held, unless the household waives continuation of benefits.  2. If a conference is requested to attempt to resolve a contested denial of expedited service, it shall be scheduled within two (2) working days of the receipt of the request for a conference unless the household requests that the conference be held later. Prior notice is not required.  3. The local office shall provide reasonable notice to the household of the scheduled time and location for the conference, or the time of the scheduled telephone conference. Notice shall be in writing; however, verbal notice may be given to facilitate the dispute resolution	The removed cross-reference is not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		scheduled telephone conference. Notice shall be in writing; however, verbal notice may be given to facilitate the dispute resolution process.	process.		
4.802.61(D)	Removed unnecessary cross-reference.	<p>D. When an appellant fails to appear at a duly scheduled hearing, having been given proper notice, and without having given timely advance notice to the ALJ of acceptable good cause for inability to appear at the hearing at the time, date and place specified in the notice of hearing, then the appeal shall be considered abandoned, and an order of dismissal shall be entered by the ALJ and served upon the parties by the Office of Administrative Courts. The order of dismissal for failure to appear shall not be implemented pending review by the Office of Appeals and entry of a final agency decision.</p> <p>The appellant, however, shall be afforded a period of ten (10) calendar days from the date the order of dismissal was mailed, during which the appellant may explain in a letter to the Administrative Law Judge the reason for his or her failure to appear. If the ALJ then finds that there was acceptable good cause for the appellant not appearing, the ALJ shall vacate the order dismissing the appeal and reschedule another hearing date.</p> <p>If the appellant does not submit a letter seeking to show good cause within a period of ten (10) calendar days, the order of dismissal shall be filed with the Office of Appeals of the State Department. The Office of Appeals shall confirm the dismissal of the appeal by an agency decision, which shall be served upon the parties and the interested Division of the State Department. Within three (3) working days after the effective date of the decision, the local office shall implement necessary actions to provide benefits in the correct amount, to terminate benefits, to recover benefits incorrectly paid, and/or other appropriate actions in accordance with the rules.</p>	<p>D. When an appellant fails to appear at a duly scheduled hearing, having been given proper notice, and without having given timely advance notice to the ALJ of acceptable good cause for inability to appear at the hearing at the time, date and place specified in the notice of hearing, then the appeal shall be considered abandoned, and an order of dismissal shall be entered by the ALJ and served upon the parties by the Office of Administrative Courts. The order of dismissal for failure to appear shall not be implemented pending review by the Office of Appeals and entry of a final agency decision.</p> <p>The appellant, however, shall be afforded a period of ten (10) calendar days from the date the order of dismissal was mailed, during which the appellant may explain in a letter to the Administrative Law Judge the reason for his or her failure to appear. If the ALJ then finds that there was acceptable good cause for the appellant not appearing, the ALJ shall vacate the order dismissing the appeal and reschedule another hearing date.</p> <p>If the appellant does not submit a letter seeking to show good cause within a period of ten (10) calendar days, the order of dismissal shall be filed with the Office of Appeals of the State Department. The Office of Appeals shall confirm the dismissal of the appeal by an agency decision, which shall be served upon the parties and the interested Division of the State Department. Within three (3) working days after the effective date of the decision, the local office shall implement necessary actions to provide benefits in the correct amount, to terminate benefits, to recover benefits incorrectly paid, and/or other appropriate actions in accordance with the rules.</p> <p>If the appellant submits a letter seeking to show good</p>	The removed cross-reference is not necessary to understand the context of this citation.	



**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		If the appellant submits a letter seeking to show good cause and the Administrative Law Judge finds that the stated facts do not constitute good cause, he/she shall enter an initial decision confirming the dismissal. The appellant may file exceptions to the initial decision pursuant to the provisions outlined at Section 4.802.63, D.	cause and the Administrative Law Judge finds that the stated facts do not constitute good cause, he/she shall enter an initial decision confirming the dismissal.		
4.802.62(D)(6)	Removed unnecessary cross-reference.	6. The Division(s) of the State Department responsible for administering the program(s) relevant to the appeal may file exceptions to the initial decision, or respond to exceptions filed by a party, even though the Division has not previously appeared as a party to the appeal. The Division's exceptions or responses shall be filed in compliance with the requirements of Section 4.802.63, D, 1, above. Exceptions filed by a Division that did not appear as a party at the hearing shall be treated as requesting review of the initial decision upon the State Department's own motion.	6. The Division(s) of the State Department responsible for administering the program(s) relevant to the appeal may file exceptions to the initial decision, or respond to exceptions filed by a party, even though the Division has not previously appeared as a party to the appeal. Exceptions filed by a Division that did not appear as a party at the hearing shall be treated as requesting review of the initial decision upon the State Department's own motion.	The removed cross-reference is not necessary to understand the context of this citation.	
4.802.62(E)(2)	Removed unnecessary cross-reference.	2. In the absence of exceptions filed by any party or by a Division of the State Department, the Office of Appeals shall review the initial decision and may review the hearing file of the Administrative Law Judge and/or the taped testimony of witnesses before entering a final agency decision. Review by the Office of Appeals shall determine whether the decision properly interprets and applies the rules of the State Department or relevant statutes and whether the findings of fact and conclusions of law support the decision. If a party or Division of the State Department objects to the agency decision entered upon review by the Office of Appeals, the party or Division may seek reconsideration pursuant to Section 4.802.63, F.	2. In the absence of exceptions filed by any party or by a Division of the State Department, the Office of Appeals shall review the initial decision and may review the hearing file of the Administrative Law Judge and/or the taped testimony of witnesses before entering a final agency decision. Review by the Office of Appeals shall determine whether the decision properly interprets and applies the rules of the State Department or relevant statutes and whether the findings of fact and conclusions of law support the decision. If a party or Division of the State Department objects to the agency decision entered upon review by the Office of Appeals, the party or Division may seek reconsideration.	The removed cross-reference is not necessary to understand the context of this citation.	
4.802.62(F)(1)(a)	Removed unnecessary cross-reference.	F. Motion for Reconsideration of a Final Agency Decision  1. A motion for reconsideration of a final agency decision may be granted by the Office of Appeals for the following reasons:	F. Motion for Reconsideration of a Final Agency Decision  1. A motion for reconsideration of a final agency decision may be granted by the Office of Appeals for the following reasons:	The removed cross-reference is not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		<p>a. Upon a showing of good cause for failure to file exceptions to the initial decision within the fifteen (15) calendar day period allowed by Section 4.802.63, D, 1; or,</p> <p>b. Upon a showing that the agency decision is based upon a clear or plain error of fact or law. An error of law means failure by the Office of Appeals to follow a rule, statute, or court decision that controls the outcome of the appeal.</p>	<p>a. Upon a showing of good cause for failure to file exceptions to the initial decision within the fifteen (15) calendar day period or,</p> <p>b. Upon a showing that the agency decision is based upon a clear or plain error of fact or law. An error of law means failure by the Office of Appeals to follow a rule, statute, or court decision that controls the outcome of the appeal.</p>		
4.803(C-D)	Removed unnecessary cross-references.	<p>C. Administrative disqualification procedures or referral for prosecution should be initiated by the local office anytime it has sufficient documentary evidence to substantiate that an individual has committed one or more acts of intentional program violation/fraud as defined in Section 4.803.2. If administrative disqualification procedures or referral for prosecution is not initiated for a case involving an over-issuance caused by a suspected act of intentional program violation/fraud, an inadvertent household error claim shall be established against the household.</p> <p>D. In cases where the determination of fraud is reversed by a court of appropriate jurisdiction or by a final agency decision, the local office shall reinstate the individual in the Program if the household is otherwise eligible. The local office shall restore any benefits that were lost as a result of the disqualification in accordance with the procedures specified in Section 4.702.</p>	<p>C. Administrative disqualification procedures or referral for prosecution should be initiated by the local office anytime it has sufficient documentary evidence to substantiate that an individual has committed one or more acts of intentional program violation/fraud. If administrative disqualification procedures or referral for prosecution is not initiated for a case involving an over-issuance caused by a suspected act of intentional program violation/fraud, an inadvertent household error claim shall be established against the household.</p> <p>D. In cases where the determination of fraud is reversed by a court of appropriate jurisdiction or by a final agency decision, the local office shall reinstate the individual in the Program if the household is otherwise eligible. The local office shall restore any benefits that were lost as a result of the disqualification.</p>	The removed cross-references are not necessary to understand the context of this citation.	
4.803.2(C)	Removed unnecessary language.	<p>C. The determination of intentional program violation shall be based upon clear and convincing evidence that demonstrates that the household member(s) committed and intended to commit intentional program violation as defined in B, above. "Clear and convincing" means evidence which is stronger than a "preponderance of evidence" and which is unmistakable and free from serious or</p>	<p>C. The determination of intentional program violation shall be based upon clear and convincing evidence that demonstrates that the household member(s) committed and intended to commit intentional program violation. "Clear and convincing" means evidence which is stronger than a "preponderance of evidence" and which is unmistakable and free from serious or substantial doubt.</p>	The statement 'as defined in B, above' is no necessary to understand this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
		substantial doubt.			
4.803.41(B)(7)	Removed unnecessary cross-reference.	7. A statement of which penalty the hearing officer believes is applicable to the case scheduled for the hearing. See Section 4.803.3 for the types of disqualifications and appropriate penalties associated with intentional program violations.	7. A statement of which penalty the hearing officer believes is applicable to the case scheduled for the hearing.	The removed cross-reference is not necessary to understand the context of this citation.	
4.803.44(C)	Removed unnecessary cross-reference.	<p>C. Following the conclusion of the hearing at the state-level, the ALJ shall prepare and issue an initial decision that shall contain a determination of whether the county or State Department acted in accordance with, and properly interpreted the rules and regulations of the State Department. For the purpose of the decision, material issues of law shall be defined. The ALJ has no jurisdiction or authority to determine issues of constitutionality or legality of departmental rules or regulations. This decision is prepared and filed with the Colorado Department of Human Services for service to each party.</p> <p>In the case of a hearing before the Administrative Law Judge (ALJ), this determination shall be an initial decision to be reviewed by the Office of Appeals pursuant to Section 4.802.63, D. The initial decision shall not be implemented pending review by the Office of Appeals and entry of a final agency decision. The initial decision shall advise the household that failure to file exceptions to provisions of the initial decision will waive the right to seek judicial review of a final agency decision affirming those provisions.</p>	<p>C. Following the conclusion of the hearing at the state-level, the ALJ shall prepare and issue an initial decision that shall contain a determination of whether the county or State Department acted in accordance with, and properly interpreted the rules and regulations of the State Department. For the purpose of the decision, material issues of law shall be defined. The ALJ has no jurisdiction or authority to determine issues of constitutionality or legality of departmental rules or regulations. This decision is prepared and filed with the Colorado Department of Human Services for service to each party.</p> <p>In the case of a hearing before the Administrative Law Judge (ALJ), this determination shall be an initial decision to be reviewed by the Office of Appeals. The initial decision shall not be implemented pending review by the Office of Appeals and entry of a final agency decision. The initial decision shall advise the household that failure to file exceptions to provisions of the initial decision will waive the right to seek judicial review of a final agency decision affirming those provisions.</p>	The removed cross-reference is not necessary to understand the context of this citation.	
4.803.5(A)(2)	Removed unnecessary cross-reference.	2. The individual who acts as a local-level hearing officer is required to carefully consider the evidence and determine, based on clear and convincing evidence, if the individual intended to commit an intentional program violation as outlined in Section 4.803.2.	2. The individual who acts as a local-level hearing officer is required to carefully consider the evidence and determine, based on clear and convincing evidence, if the individual intended to commit an intentional program violation.	The removed cross-reference is not necessary to understand the context of this citation.	
4.804.1(A)(6)	Removed	6. A warning that the disqualification penalties	6. A warning that the disqualification penalties for	The removed	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
	unnecessary cross-reference.	for fraud under the Food Assistance Program that could be imposed and a statement of which penalty the hearing office believes is applicable to the case scheduled for the hearing. See Section 4.803.2, F, for the fraud disqualification penalties.	fraud under the Food Assistance Program that could be imposed and a statement of which penalty the hearing office believes is applicable to the case scheduled for the hearing.	cross-reference is not necessary to understand the context of this citation.	

**Title of Proposed Rule:** Technical Cleanup of the Food Assistance Program  
**CDHS Tracking #:** 18-09-28-02  
**CCR #:** 10 CCR 2506-1  
**Office, Division, & Program:** OES, FEAD, Food Assistance **Phone:** 303-866-5813  
**Rule Author:** Teri Chasten **E-Mail:** Teri.chasten@state.co.us

### **STAKEHOLDER COMMENT SUMMARY**

#### **Development**

*The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):*

--

#### **This Rule-Making Package**

*The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:*

--

#### **Other State Agencies**

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

☐ Yes ☐ No

If yes, who was contacted and what was their input?

--

#### **Sub-PAC**

Have these rules been reviewed by the appropriate Sub-PAC Committee?

☐ Yes ☐ No

Name of Sub-PAC			
Date presented			
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.			

#### **PAC**

Have these rules been approved by PAC?

☐ Yes ☐ No

Date presented			
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.			

#### **Other Comments**

Comments were received from stakeholders on the proposed rules:

☐ Yes ☐ No

*If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.*

#### 4.070 COMPLAINT REQUIREMENTS

The local office shall, ~~as part of its overall outreach responsibility, publicize the state's complaint system.~~ In addition, the local office shall advise any household wishing to file a complaint of the complaint procedure and offer assistance in filing a complaint, if appropriate.

The State Department shall ensure that information is made available to potential participants, applicants, participants, or other interested persons concerning the complaint system, and the procedure for filing a complaint at the state or county level. Such information shall be made available to potential participants, applicants, and other interested parties through written materials and posters which shall be prominently displayed in all certification and issuance offices.

~~For complaints of discrimination, refer to 4.070.2 through 4.070.22.~~

The local office shall make every effort to resolve all complaints, excluding complaints of discrimination, brought to their attention at the local level. However, all complainants shall be informed they have the right to contact the State Department if they are not satisfied with the action taken at the local level.

\*\*\*\*\*

##### 4.070.2 Non-Discrimination Complaint Requirements

STATE AND LOCAL AGENCIES SHALL NOT DISCRIMINATE AGAINST ANY APPLICANT OR PARTICIPANT IN ANY ASPECT OF PROGRAM ADMINISTRATION, INCLUDING, BUT NOT LIMITED TO, THE CERTIFICATION OF HOUSEHOLDS, THE ISSUANCE OF COUPONS, THE CONDUCT OF FAIR HEARINGS, OR THE CONDUCT OF ANY OTHER PROGRAM SERVICE FOR REASONS OF AGE, RACE, COLOR, SEX, DISABILITY, RELIGIOUS CREED, NATIONAL ORIGIN, POLITICAL BELIEFS, OR REPRISAL OR RETALIATION FOR PRIOR CIVIL RIGHTS ACTIVITY IN ANY PROGRAM OR ACTIVITY FUNDED BY THE USDA. DISCRIMINATION IN ANY ASPECT OF PROGRAM ADMINISTRATION IS PROHIBITED. ~~Food Assistance benefits shall be extended to all eligible households without regard to age, race, color, sex, disability, religious creed, national origin or political beliefs.~~ Local offices shall ensure that the nondiscrimination poster provided by FNS is prominently displayed. Posters may be obtained through the State Department.

The local office shall explain the complaint procedures, as outlined in 4.070.21 "Discrimination Complaint Procedure," to each person expressing an interest in filing a discrimination complaint and shall advise the individual of the right to file a complaint under this procedure. Such information shall be made available within ten (10) calendar days from the date of request.

\*\*\*\*\*

##### 4.070.21 Discrimination Complaint Procedure

- A. Individuals who believe they have been subject to discrimination may file a written complaint with the USDA, FNS national office, the local office, and/or the State Department. All complaints of alleged discrimination shall be made in writing and shall be submitted to the FNS national office.

If allegations of discrimination are made verbally, and if the complainant is unable or unwilling to put the allegations in writing, the State or county employee to whom the allegation is made shall document the complaint in writing. The person accepting the complaint shall make every effort to secure the information specified in Subsection C, below.

- B. The complainant shall be advised that a complaint may be submitted to the State Department, FNS or both, and that a complaint shall not be investigated unless information specified in items C, 1-2, through C, 6-4, below, is provided. In addition, the complainant shall be advised that a complaint must be filed no later than one hundred eighty (180) calendar days from the date of the alleged discrimination. The local office

shall date stamp or otherwise note the date the complaint is received by the office.

1. Complaints directed to the FNS national office shall be addressed to: U.S. Department of Agriculture, Director, ~~Office of Adjudication~~, OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410; FAX: (202) 690-7442; EMAIL: PROGRAM.INTAKE@USDA.GOV.
2. Complaints directed to the State Department shall be addressed to: Colorado Department of Human Services, Food Assistance Program, 1575 Sherman St., Denver, CO 80203.

C. The complaint shall include the following information to facilitate investigations:

1. The name, address and telephone number or other means of contacting the person alleging discrimination;
2. The location and name of the office which is accused of discriminatory practices;
3. The nature of the incident or action, or the aspect of Program administration that led the person to allege discrimination;
4. The reason for the alleged discrimination (~~age, race, color, sex, handicap, religious creed, national origin, or political beliefs~~);
5. The name(s) and title(s), if appropriate, of person(s) who may have knowledge of the alleged discriminatory act; and
6. The date(s) on which the alleged discriminatory action(s) occurred.

\*\*\*\*\*

#### 4.100 FOOD ASSISTANCE PROGRAM DEFINITIONS

~~“ABAWD”, see “Able-bodied adult without dependent.”~~

“ABAWD County” means a county with an Employment First Program that requires ABAWDs to meet a mandatory monthly ABAWD work requirement of working or participating in an acceptable work activity eighty (80) hours per month or completing all assigned workfare hours monthly.

“Able-bodied adult without dependent (ABAWD)” means an individual between the ages of eighteen (18) and fifty (50) without a physical or mental disability, who is not pregnant, and who lives in a food assistance household with no one under the age of eighteen (18).

~~“ACSES”, see “Automated Child Support Enforcement System.”~~

“Administrative disqualification hearing (ADH)” means a disqualification hearing against an individual accused of wrongfully obtaining or attempting to obtain assistance.

“Administrative law judge (ALJ)” means the person that presides over fair hearings and administrative disqualification hearings at the state level.

“Adverse action” means any action taken by a local office that causes a household's benefits to be reduced or terminated.

“Adverse action period” means the period of time that elapses prior to the adverse action becoming effective during the certification period.

“Agency error claim” means that a debt has been established for the household to repay due to an overpayment of benefits that was issued to the household resulting from an error made by the local office.

“Allotment” means the total amount of Food Assistance benefits a household is authorized to receive in a particular month.

~~“ALJ”, see “Administrative Law Judge.”~~

“Appeal” means a request made by a household to have a decision about its case reviewed by an impartial third party to determine whether the decision was correct.

“Application filing date” means the date an application for assistance is received by the county office.

“Application” means a request on a state-approved form for benefits, which can include the electronic state-prescribed form.”

“Application for redetermination/RECERTIFICATION (RRR)” means an application submitted prior to the last month of the certification period to determine a household’s continued eligibility for the next certification period.

“Application process” means the required process a household must complete for purposes of determining eligibility for benefits.

“Authorized representative” means an individual who has been designated in writing by a responsible member of the household to act on behalf of or assist the household with the application process, obtaining benefits, and/or in using benefits at authorized retailers.

“Automated Child Support Enforcement System (ACSES)” means the automated computer system used by Child Support Services to record child support payments.

“Basic Categorical Eligibility (BCE)” means the status granted to any household that is not eligible for Expanded Categorical Eligibility and contains only members who receive, or are eligible to receive, benefits from Colorado Works, Supplemental Security Income, Old Age Pension, Aid to the Needy and Disabled, Aid to the Blind, or a combination of these benefits (~~see Section 4.4011.1,1).~~

“Basic Utility Allowance (BUA)” means a fixed deduction applied to a household that does not pay for heating or cooling and incurs at least two (2) non-heating or non-cooling utility costs, such as electricity, water, sewer, trash, cooking fuel, or telephone.

~~“BCE”, see “Basic Categorical Eligibility.”~~

“Boarder” means an individual residing with others and paying reasonable compensation to others for lodging and meals.

“Boarding house” means an establishment that is licensed as a commercial enterprise and which offers meals and lodging for compensation.

~~“BUA”, see “Basic Utility Allowance.”~~

“Case payee” means the person appointed to receive the household’s benefits.

“Case record” means a combination of the physical case file that contains documents pertinent to a household’s case; similar documents maintained in an electronic database; and information about the household that is contained within the statewide automated system.

~~“CBMS”, see “Colorado Benefits Management System.”~~



“Certification period” means the period of time for which a household has been certified to receive benefits.

“Civil union” means a legally binding partnership between two individuals without the legal recognition of these individuals as spouses.

“Claim” means a debt resulting from an overpayment of benefits that a household is obligated to repay.

“Clear and convincing evidence” means evidence which is stronger than a preponderance of evidence and which is unmistakable and free from serious or substantial doubt.

~~“Client error claim” means a debt that has been established for the household to repay due to an overpayment of benefits that was issued to a household due to a misunderstanding or unintentional error on the part of the household.~~

“Collateral contact” means a verbal or written confirmation of a household's circumstances by a person outside the household who has first-hand knowledge of the information, made either in person, electronically submitted or by telephone.

“COLORADO BENEFITS MANAGEMENT SYSTEM (CBMS):” MEANS THE COMPUTER SYSTEM USED TO DETERMINE FOOD ASSISTANCE ELIGIBILITY.

“Colorado Electronic Benefit Transfer System (CO/EBTS)” means the electronic system that enables Food Assistance participants or their authorized representatives to redeem their Food Assistance benefits at point-of-sale terminals.

“COLORADO UNEMPLOYMENT BENEFITS SYSTEM (CUBS)” MEANS THE ELECTRONIC SYSTEM BY WHICH UNEMPLOYMENT INSURANCE BENEFITS (UIB) ARE DETERMINED BY COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT.

“Communal dining facility” means an establishment approved by FNS that prepares and serves meals for elderly persons, or for Supplemental Security Income (SSI) recipients, and their spouses. This also includes federally subsidized housing for elderly persons at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate State or local agency to offer meals at concessional prices to elderly persons or SSI recipients, and their spouses.

“Compromise” means the decision to reduce the amount of a claim that is owed by a household.

“County Assistance Office” means the county social or human services office that is responsible for administering the Food Assistance Program.

~~“CUBS” means the Colorado Unemployment Benefits System.~~

~~“D-SNAP” means the Disaster Supplemental Nutrition Assistance Program (D-SNAP). This Program shall be implemented as a result of a “major disaster” or “temporary emergency” to provide temporary assistance to households affected by these misfortunes. A~~ MEANS THE FOOD ASSISTANCE PROVIDED TO THE AFFECTED AREAS WHEN A Presidential disaster declaration for individual assistance IS must be declared for the affected areas to be eligible for DSNAP, and the decision to implement this Program after a Presidential declaration shall be at the affected county's discretion in coordination with the State Food Assistance Office and FNS.

~~“DCA”, see “Disqualification Consent Agreement.”~~

~~“Demand letter”, see “Notice of Overpayment” and “Repayment Agreement.”~~

“DISABLED” MEANS A PERSON WHO:

1. RECEIVES SUPPLEMENTAL SECURITY INCOME BENEFITS UNDER TITLE XVI OF THE SOCIAL SECURITY ACT, OR THE COLORADO SUPPLEMENT, OR AID TO THE NEEDY AND DISABLED- SUPPLEMENTAL SECURITY INCOME- COLORADO SUPPLEMENT (AND-SSI-CS), OR AID TO THE BLIND-

- SUPPLEMENTAL SECURITY INCOME-COLORADO SUPPLEMENT (AB-SSI-CS); OR DISABILITY OR BLINDNESS PAYMENTS UNDER TITLE I, II, X, OR IXV OF THE SOCIAL SECURITY ACT;
2. IS A VETERAN WITH A SERVICE-CONNECTED DISABILITY RATED OR PAID AS A TOTAL DISABILITY UNDER TITLE 38 OF THE UNITED STATES CODE OR IS A VETERAN RECEIVING A PENSION FOR A NON-SERVICE CONNECTED DISABILITY;
  3. IS A VETERAN CONSIDERED BY THE VA TO BE IN NEED OF REGULAR AID AND ATTENDANCE OR PERMANENTLY HOUSEBOUND UNDER TITLE 38 OF THE CODE;
  4. IS A SURVIVING SPOUSE OF A VETERAN AND CONSIDERED IN NEED OF AID AND ATTENDANCE OR PERMANENTLY HOUSEBOUND OR A SURVIVING CHILD OF A VETERAN AND CONSIDERED BY THE VA TO BE PERMANENTLY INCAPABLE OF SELF-SUPPORT UNDER TITLE 38 OF THE UNITED STATES CODE;
  5. IS A SURVIVING SPOUSE OR CHILD OF A VETERAN AND CONSIDERED BY THE VA TO BE ENTITLED TO COMPENSATION FOR A SERVICE-CONNECTED DEATH OR PENSION BENEFITS FOR A NON-SERVICE-CONNECTED DEATH UNDER TITLE 38 OF THE UNITED STATES CODE AND HAS A DISABILITY CONSIDERED PERMANENT UNDER SECTION 221(I) OF THE SOCIAL SECURITY ACT. "ENTITLED", AS USED IN THIS DEFINITION, REFERS TO THOSE VETERANS' SURVIVING SPOUSES AND CHILDREN WHO ARE RECEIVING THE COMPENSATION OR BENEFITS OR HAVE BEEN APPROVED FOR SUCH BENEFITS BUT ARE NOT YET RECEIVING THEM;
  6. IS A PERSON WHO HAS A DISABILITY CONSIDERED PERMANENT UNDER SECTION 221(I) OF THE SOCIAL SECURITY ACT (SSA) AND RECEIVES A FEDERAL, STATE, OR LOCAL PUBLIC DISABILITY RETIREMENT PENSION;
  7. IS A PERSON WHO RECEIVES AN ANNUITY FOR DISABILITY FROM THE RAILROAD RETIREMENT BOARD WHO IS CONSIDERED DISABLED BY THE SSA OR WHO QUALIFIES FOR MEDICARE AS DETERMINED BY THE RAILROAD RETIREMENT BOARD; OR
  8. IS A RECIPIENT OF INTERIM ASSISTANCE BENEFITS PENDING THE RECEIPT OF THE SUPPLEMENTAL SECURITY INCOME (SSI), DISABILITY-RELATED MEDICAL ASSISTANCE UNDER TITLE XIX OF THE SOCIAL SECURITY ACT, OR DISABILITY-BASED STATE ASSISTANCE BENEFITS PROVIDED THAT THE ELIGIBILITY TO RECEIVE THESE BENEFITS IS BASED ON DISABILITY OR BLINDNESS CRITERIA WHICH ARE AT LEAST AS STRINGENT AS THOSE USED UNDER TITLE XVI OF THE SOCIAL SECURITY ACT.

"Dispute resolution conference (DRC)" means an informal meeting between a household and the local office to review an action taken on a case and the relevant facts pertaining to such action.

"Disqualification Consent Agreement (DCA)" means the form that allows the individual(s) suspected of intentional Program violation/fraud to consent to his/her disqualification in cases of deferred adjudication.

"Disqualified individuals" means any individual who is ineligible to receive Food Assistance due to having been disqualified for an intentional Program violation/fraud, failure to provide or obtain a SSN, ineligible non-citizens, individuals disqualified for failure to cooperate with work requirements, individuals disqualified for failure to cooperate with the State quality assurance division, and able-bodied adults without dependents who have been disqualified after receiving three months of benefits within thirty-six

(36) months without meeting the monthly ABAWD work requirement.

"Documentary evidence" means written information used to verify the income, expenses, and other circumstances of a household.

"Documentation" means the collection of documentary evidence, verification, case notes, and other information related to a household's case upon which eligibility determinations and other decisions are based.

~~“DRC”, see “Dispute resolution conference.”~~

“Drug and Alcohol Treatment Center (DAA)” means any residential facility run by a private, nonprofit organization or institution, or a publicly operated community mental health center, under Part B of Title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) that provides rehabilitative treatment to persons participating in a drug or alcohol treatment program.

“Dual participation” means the receipt of benefits in more than one Food Assistance household or state in the same calendar month.

~~“Duplicate benefits”, see “Dual Participation.”~~

~~“EF”, see “Employment First.”~~

“Elderly” means an individual that is sixty (60) years of age or older.

~~“EBT (CO/EBTS)” MEANS see “Colorado Electronic Benefit Transfer. System.”~~

“EBT card” means the card issued to persons authorized to receive Food Assistance to which the household’s allotment is credited. Used for Food Assistance purposes to purchase eligible foods at approved retailers.

“Employment and Training Program” means a program operated by the Department of Human Services consisting of work, training, education, work experience, and/or job search activities designed to help recipients obtain gainful employment.

“Employment First (EF)” means Colorado’s Employment and Training program.

“Excess medical deduction” means a deduction from a household’s total gross income applied when a person with a disability OR A PERSON ~~or person~~ who is elderly has medical expenses over a specified monthly amount.

“Exempt income” means income that is exempt from consideration when determining eligibility for Food Assistance.

“Expanded Categorical Eligibility (ECE)” means households that are exempt from having resources considered when determining eligibility for Food Assistance.

“Expedited service” means the method by which an application for Food Assistance is processed to ensure that the neediest households have access to Food Assistance benefits no later than the seventh (7<sup>th</sup>) calendar day following the date of application.

“Fair Hearing” means a hearing conducted in person or on the telephone by the Office of Administrative Courts to provide an impartial decision on a household’s appeal of a local office’s decision or action.

“Financial criteria” means the set of rules governing gross and net income and resource standards and the proper methods for computing a household’s income and resources.

“Fleeing felon” means an individual who is fleeing to avoid prosecution or arrest for a felony under a state or federal law.

“FNS” means the Food and Nutrition Service of the U.S. Department of Agriculture.

“Fraud” means the act committed by a person when obtaining, attempting to obtain, or aiding and abetting another to obtain assistance benefits through intentionally false statements, representations, or the withholding of material information.

“Full-time student” means a person who has a school schedule equivalent to a full-time curriculum as defined by the institute of higher education the person is attending.

“Good cause” means a waiver granted to a person or household a) excusing them from complying with a specific eligibility requirement because compliance could cause adverse consequences to the person or household, or b) providing the household with more time to comply with a specific eligibility requirement.

“G-845” means the form submitted to the U.S. Citizenship and Immigration Services to request immigration status verification for a Food Assistance applicant or participant.

“Gross Income” means the total of all non-exempt earned and unearned income added together before any deduction or disregard is considered.

“Group Living Arrangement (GLA)” means a public or private non-profit facility certified under Section 1616(e) of the Social Security Act which serves no more than sixteen (16) people.

~~“HCUA”, see “Heating/Cooling Utility Allowance.”~~

“Head of household (HOH)” means the person who is generally regarded as the person with the most knowledge of the household’s circumstances. The head of household is the person to whom the local office addresses correspondence and notices about the household’s case. This person is generally the individual who completes the application process and is responsible for obtaining and using the household’s EBT card.

“Heating/Cooling Utility Allowance (HCUA)” means a fixed deduction applied to any household that incurs a heating or cooling expense.

~~“HOH”, see “Head of Household.”~~

“Homeless” means an individual who lacks a fixed and regular nighttime residence or whose primary residence is: a supervised shelter designed for temporary accommodations, a halfway house or similar facility that provides temporary residence, a place not designed for or ordinarily used as regular sleeping accommodations for human beings, or a temporary accommodation in a THE residence of another individual for ninety (90) days or less.

“Homeless meal provider” means:

- A. A public or private nonprofit establishment that feeds homeless persons; or,
- B. A restaurant which contracts with an appropriate State agency to offer meals at concessional (low or reduced) prices to homeless persons.

“Household” means a group of individuals who live together and customarily purchase and prepare food together.

“Household income” means all earned and unearned income received or anticipated to be received by household members from all sources, unless specifically exempted for Food Assistance eligibility purposes.

~~“IEVS”, see “Income and Eligibility Verification System.”~~

“Inadvertent Household Error Claim” MEANS A DEBT THAT HAS BEEN ESTABLISHED FOR THE HOUSEHOLD TO REPAY DUE TO AN OVERPAYMENT OF BENEFITS THAT WAS ISSUED TO A

HOUSEHOLD DUE TO A MISUNDERSTANDING OR UNINTENTIONAL ERROR ON THE PART OF THE HOUSEHOLD. ~~see “Client Error Claim.”~~

“Income and Eligibility Verification System (IEVS)” means a system used to match applicants’ and participants’ Social Security Numbers with the Social Security Administration, Internal Revenue Service, and the Department of Labor and Employment to obtain information about household income.

“Initial application” means a household’s first application for assistance or an application for assistance that is received after the household has been off of the Program for any period following the end of a certification period.

“Initial month of application” means the first month for which the household is certified for participation in the Program for those who have not received food benefits in the State previously or following any break after the end of the certification period where the household was not certified for participation. If the household submits an application for recertification prior to the expiration of its certification period and is found eligible for the first month following the end of the certification period, that month shall not be an initial month. ~~Benefits for the initial month of application are prorated in accordance with Section 4.207.2.~~

“Indigent non-citizen” means a sponsored non-citizen who, after considering all income and contributions provided by the sponsor and other sources in conjunction with the non-citizen’s own income, is unable to obtain food and shelter amounting to one hundred thirty percent (130%) of the federal poverty level for the non-citizen’s household size. When a non-citizen is declared indigent, only the amount provided by the sponsor shall be deemed to the non-citizen. A declaration of indigence may last up to twelve (12) months, but may be renewed at the end of such a period, if necessary. The local office must notify the U.S Attorney General of each indigence determination, including the name of the sponsor and the sponsored non-citizen.

“Institution of higher education” means institutions that normally require a high school diploma or equivalency certificate for a student to enroll, such as colleges, universities, and vocational or technical schools.

“Intentional Program Violation (IPV)” means when an individual has intentionally made a false or misleading statement or misrepresented, concealed or withheld facts, or committed or intended to commit any act that constitutes a violation of the Food and Nutrition Act of 2008, the Food Assistance Program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt or possession of Food Assistance benefits.

“Intentional” means a false representation of a material fact with knowledge of that falsity or omission of a material fact with knowledge of that omission.

~~“IPV”, see “Intentional Program Violation.”~~

“IPV hearing”, see “Administrative disqualification hearing.”

“IPV hearing waiver”, see “Waiver of administrative disqualification hearing.”

“Issuance month” means the calendar month for which a benefit allotment is issued.

“Lawful Permanent Resident” means a non-citizen legally admitted into the United States to reside on a permanent basis.

~~“LEAP”, see “Low income Energy Assistance Program.”~~

“Liquid resources” means assets such as cash on hand or assets that can be easily converted to cash such as money in checking or savings accounts, saving certificates, or stocks and bonds.

“Live-in attendants” means individuals who reside with a household to provide medical, housekeeping, child care, or other personal services.

“Local-level Dispute Resolution Conference”, see “Dispute Resolution Conference.”

~~“Local-level hearing”, see “Dispute Resolution Conference”~~

“Local office” means the county department of social/human services that is responsible for administering the Food Assistance Program. In those counties that have more than one office that administers the Food Assistance Program, “local office” shall be inclusive of all local offices within the county that administer the Program.

“Low-Income HOME Energy Assistance Program (LEAP)” means the Colorado program designed to help low-income applicants pay a portion of their winter heating costs.

“Management Evaluation (ME) reviews” means state or federal reviews of each county’s administration of the Food Assistance Program to determine each county’s adherence to federal- and state-mandated requirements. Such reviews are mandated by the Food and Nutrition Service of the USDA.

~~“Major disaster” means a disaster or catastrophe as determined by the President of the United States pursuant to the Disaster Relief Act of 1974.~~

“Mandatory Work Registrant” means an individual age sixteen (16) to sixty (60) who has not met any Federal exemptions from SNAP work requirements and is therefore required to register for work or be registered by the State agency.

“Mass update” means a change in data or policy that affects the entire state-wide caseload or a portion of the caseload.

“Material information” means information to which a reasonable person would attach importance when determining a course of action.

~~“ME reviews”, see “Management Evaluation reviews.”~~

“Migrant farm worker” means a person who travels away from home on a regular basis to follow the flow of seasonal agricultural work.

“Minimum benefit” means the minimum amount of benefits issued to one- and two-person households that are eligible for assistance, but whose issuance calculates to less than the federally prescribed minimum allotment.

“Net income test” means the one hundred percent (100%) federal poverty level under which a household’s income must fall after all allowable deductions are considered in order to be considered eligible. This level is specific to the household size as defined by USDA, FNS.

~~“NOA”, see “Notice of Action.”~~

“Non-ABAWD County” means a county that is not requiring ABAWDs to meet the mandatory monthly ABAWD work requirement; although, the individual may be required to participate in non-ABAWD work program activities.

“Non-Employment First County” means a county in which there is no Employment First Program; although, work registrants must still sign an affidavit attesting that he/she will seek work opportunities through available resources.

“Non-liquid resources” means assets which cannot be easily converted into cash such as vehicles and real property.

“Non-financial criteria” means the set of rules governing elements not related to the gross and net income and resource standards.

“Notice of Action (NOA)” means the state-prescribed form sent to a household every time an action is taken to increase, decrease, suspend, deny, terminate, or otherwise affect a household’s benefits. This form describes the action taken upon a household’s case and the resulting effect.

“Notice of overpayment” means a notice sent to a household upon the establishment of a claim against the household for an overpayment of benefits.

“On-the-job training (OJT)” means training provided to an employee after he or she is hired. Such training is designed for individuals who do not have the necessary work experience required for the job.

“One Utility Allowance (OUA)” means a fixed deduction given to any household that is not eligible to receive the HCUA or BUA and incurs only one (1) non-heating or non-cooling utility expense, such as electricity, water, sewer, trash, or cooking fuel. The OUA is not allowed if the household’s only utility expense is a telephone.

~~“OUA”, see “One Utility Allowance.”~~

“Over-issuance” means the amount of Food Assistance benefits issued to a household that exceeds the amount it was eligible to receive.

“Parolee” means a non-citizen allowed into the United States for urgent humanitarian reasons or when the non-citizen’s entry is determined to be for significant public benefit. Parole does not constitute a formal admission to the United States and confers temporary status only, requiring parolees to leave when the conditions supporting their parole cease to exist.

“Payment Error Rate (PER)” means the sum of the overpayment error rate and the underpayment error rate, which is the value of all over and underpaid allotments expressed as a percentage of all allotments issued to the cases reviewed, excluding those cases processed by SSA personnel or participating in certain demonstration projects designated by FNS.

“Period of ineligibility” means the period of time a person is ineligible to receive Food Assistance benefits as a result of a failure to cooperate with either a state or federal QA review.

“Periodic Report Form (PRF)” means the report that must be submitted by the household during the twelfth (12<sup>th</sup>) month of a twenty four (24) month certification period. The purpose of this form is to allow the household to report any changes that occurred during the first half of the twenty four (24) month certification period and for the local office to determine the household’s continued eligibility for the remaining twelve (12) months of the household’s certification period.

~~“Person with disabilities” means a person who meets any of the following criteria:~~

- ~~A. — Receives Supplemental Security Income benefits under Title XVI of the Social Security Act, or the Colorado Supplement, or Aid to the Needy Disabled Supplemental Security Income Colorado Supplement (AND-SSI-CS), or Aid to the Blind Supplemental Security Income Colorado Supplement (AB-SSI-CS); or disability or blindness payments under Title I, II, X, or IXV of the Social Security Act;~~
- ~~B. — Is a veteran with a service-connected disability rated or paid as a total disability under Title 38 of the United States Code or is a veteran receiving a pension for a non-service-connected disability;~~
- ~~C. — Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;~~
- ~~D. — Is a surviving spouse of a veteran and considered in need of aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under Title 38 of the United States Code;~~
- ~~E. — Is a surviving spouse or child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under Title 38 of the~~



~~United States Code and has a disability considered permanent under Section 221(i) of the Social Security Act. "Entitled" in this definition refers to those veterans' surviving spouses and children who are receiving the compensation or benefits or have been approved for such benefits but are not receiving them;~~

~~F. Is a person who has a disability considered permanent under Section 221(i) of the Social Security Act (SSA) and receives a federal, state, or local public disability retirement pension;~~

~~G. Is a person who receives an annuity for disability from the Railroad Retirement Board who is considered disabled by the SSA or who qualifies for Medicare as determined by the Railroad Retirement Board;~~

~~H. Is a recipient of interim assistance benefits pending the receipt of Supplemental Security Income (SSI), disability-related medical assistance under Title XIX of the Social Security Act, or disability-based state assistance benefits provided that the eligibility to receive these benefits is based on disability or blindness criteria which are at least as stringent as those used under Title XVI of the Social Security Act.~~

"Post high school education" means colleges, universities, and post-high school level technical and vocational schools.

"Prospective budgeting" means the method of computing a household's monthly allotment by using current circumstances and reasonably anticipated income for the month in which the allotment will be issued.

"Prudent Person Principle (PPP)" means a worker's reasonable judgment when determining the proper course of action in a given situation in order to make an eligibility determination.

"Public Assistance (PA)" means any of the following programs authorized by the Social Security Act of 1935, as amended: Old Age Pension, TANF, including TANF for children of unemployed fathers, aid to the blind, aid to the permanently and totally disabled and aid to aged, blind or disabled.

~~"Public assistance PA households"~~ means households that contain only persons who receive TANF or adult financial cash grants.

"QUALITY ASSURANCE (QA)" means ~~quality assurance and refers to~~ the division responsible for reviewing Food Assistance cases to determine if the proper eligibility determination was made and if the correct amount of benefits were issued to a household in a given month.

"QA active case" means cases where a household was certified prior to or during the sample month and issued Food Assistance benefits for the sample month.

"QA negative case" means cases where a household was denied certification to receive Food Assistance benefits in the sample month or which had its participation in the Program terminated during a certification period effective for the sample month.

"Qualified non-citizen" means an individual who meets the specific definition of "qualified alien" as defined by the Food and Nutrition Service, United States Department of Agriculture, which includes lawful permanent residents, asylees, refugees, parolees, individuals granted withholding of deportation or removal, conditional entrants, Cuban or Haitian entrants, battered aliens, and non-citizen victims of a severe form of trafficking. This term is not itself an immigration status, but rather includes a collection of immigration statuses. It is a term used solely for Federal public benefits purposes. Qualified non-citizens are not automatically eligible for assistance, but rather must meet all other eligibility requirements.

"Quality Control review" means a review of a statistically valid sample of active and negative cases to determine the extent to which households are receiving the Food Assistance allotments to which they are entitled, and to determine the extent to which decisions to deny, suspend, or terminate cases are correct.

"Qwest QUEST card" means Colorado's specific version of the EBT card.

~~"Recertification/redetermination application", see "Application for Redetermination."~~

“Recoupment” means the withholding of a portion of a household’s monthly allotment to pay back an over-issuance.

“Repayment agreement” means the form sent to a household upon the establishment of a claim that outlines the household’s responsibility and options for repayment.

“Restoration” means a payment of benefits made to a household who was eligible to receive the amount in a past month but did not receive the payment.

“Roomer” means an individual to whom a household furnishes lodging, but not meals, for compensation.

~~“RRR”, see “Application for Redetermination.”~~

“Sanction” means a specified period of ineligibility imposed against an individual who failed to take a required action as part of his or her eligibility for either Food Assistance or Colorado Works.

~~“SAVE”, see “Systematic Alien Verification for Entitlements.”~~

“Self-employment” means a situation where some or all income is received from a self-operated business or enterprise in which the individual retains control over work or services offered and assumes the necessary business risks and expenses connected with the operation of the business.

“Shelter for battered women and children” means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

“Simplified Reporting” means the reporting status granted to households receiving either a six (6) or twenty-four (24) month certification period. Households considered simplified reporting households are not required to report any changes to household circumstances throughout the course of the certification period unless the change that occurred causes the household’s combined gross income to rise above one hundred thirty percent (130%) of the federal poverty level for the applicable household size. Households receiving a twenty four (24) month certification period have the additional requirement of completing and submitting a periodic report form (PRF) (~~see “Periodic report form”~~) at the twelve (12) month point of the certification period on which all changes that have occurred since initial application must be reported.

“SNAP” means Supplemental Nutrition Assistance Program, which is referred to as the Food Assistance Program in Colorado.

“Sponsor” means a person who has executed an affidavit(s) of support or similar agreement on behalf of a non-citizen as a condition of the non-citizen’s entry or admission to the US as a permanent resident.

“Sponsored non-citizen” means those non-citizens lawfully admitted for permanent residence into the United States who have been sponsored by an individual for entry into the country.

~~“Supplemental Security Income (SSI)” means monthly cash payments made under the authority of: (1) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled; (2) section 1616(a) of the Social Security Act; or (3) section 212(a) of Pub. L. 93-66.~~

“Standard Eligibility” means the set of rules applicable to households that do not fall under “Expanded categorical eligibility” or “Basic categorical eligibility.” Households considered under standard eligibility rules are subject to resource limits as a condition of eligibility.

“State Department” means the Colorado Department of Human Services.

“State office or Division” means the agency of the state government that has the responsibility for the oversight and monitoring of each county department’s administration of the Food Assistance Program.

“State-level fair hearing” means a review requested by an applicant or recipient which is held before an Administrative Law Judge (ALJ) to establish whether an action or eligibility determination taken was correct.

“Striker” means an individual who is involved in a strike or other concerted stoppage of work by employees, including a stoppage by reason of the expiration of a collective bargaining agreement and any concerted slowdown or other concerted interruption of operations by employees.

“Supplement” means a payment of additional allowable benefits made for the current issuance month.

“SUPPLEMENTAL SECURITY INCOME (SSI)” MEANS MONTHLY CASH PAYMENTS MADE UNDER THE AUTHORITY OF: (1) TITLE XVI OF THE SOCIAL SECURITY ACT, AS AMENDED, TO THE AGED, BLIND AND DISABLED; (2) SECTION 1616(A) OF THE SOCIAL SECURITY ACT; OR (3) SECTION 212(A) OF PUB. L. 93-66.

“Systematic Alien Verification for Entitlements (SAVE)” means the system allowing for the validation of immigration statuses of non-citizen applicants and participants through access to centralized U.S. Citizenship and Immigration Service (USCIS) data.

“Telephone allowance” means a fixed deduction given to any household not incurring utility expenses other than the expense for a telephone.

“TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) OR COLORADO WORKS (CW)” means Temporary Assistance for Needy Families THE CASH ASSISTANCE PROGRAM ALSO KNOWN AS TITLE IV-A OF THE SOCIAL SECURITY ACT.

“Temporary emergency” means an emergency caused by any natural or human-caused disaster, other than a major disaster declared by the President of the United States under the Disaster Relief Act of 1974, which is determined by FNS to have disrupted commercial channels of food distribution.

“Thrifty Food Plan” means the diet required to feed a family of four (4) persons consisting of a man and a woman twenty (20) through fifty (50) years of age, a child six (6) through eight (8) years of age, and a child nine (9) through eleven (11) years of age, determined in accordance with the U.S. Department of Agriculture. The cost of such a diet shall be the basis for uniform allotments for all households regardless of their actual composition.

“Trafficking” means attempting to buy, sell, steal, or otherwise affect an exchange of Food Assistance benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and Personal Identification Numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone. ~~Additionally, any bona fide recipient of Food Assistance or his or her authorized representative who knowingly transfers Food Assistance benefits to another who does not, or does not intend to use said Food Assistance for the benefit of the Food Assistance household for whom the Food Assistance benefits were intended, has committed trafficking.~~ TRAFFICKING ALSO INCLUDES (1) THE EXCHANGE OF FOOD ASSISTANCE BENEFITS FOR FIREARMS, AMMUNITION, EXPLOSIVES, OR CONTROLLED SUBSTANCES, (2) THE RESALE OF A PRODUCT PURCHASED WITH FOOD ASSISTANCE BENEFITS IN EXCHANGE FOR CASH OR CONSIDERATION OTHER THAN ELIGIBLE FOOD, AND (3) THE PURCHASE OF A PRODUCT THAT HAS A CONTAINER REQUIRING A RETURN DEPOSIT WITH THE INTENT OF OBTAINING CASH BY DISCARDING THE PRODUCT AND RETURNING THE CONTAINER FOR THE DEPOSIT AMOUNT.

“Under-issuance” means the difference between the allotment the household was eligible to receive and the allotment the household actually received, which was lower than what the household was eligible to receive.

~~“UIB” means Unemployment Insurance Benefits.~~

“VALID APPLICATION” MEANS A STATE-PRESCRIBED FORM COMPLETED WITH NAME, ADDRESS, AND SIGNATURE.

“VENDOR PAYMENTS” MEANS MONEY PAYMENTS THAT ARE NOT PAYABLE DIRECTLY TO A HOUSEHOLD, BUT ARE PAID TO A THIRD PARTY FOR A HOUSEHOLD EXPENSE.

“Verification” means confirmation of a household’s statements through written, ~~or~~VERBal, or electronic means

“Verified upon receipt (VUR)” means information that is provided directly from the primary source and which is not questionable. Information considered verified upon receipt shall be acted upon for both simplified reporting households and non-simplified reporting households.

~~“Voluntary quit” means when a person voluntarily quits or reduces his or her work hours to less than thirty (30) per week or who are now earning less than the equivalent of thirty (30) hours per week paid at the federal minimum wage.~~

“Voluntary Work Registrant” means an individual who chooses to participate in the program and is not mandated to participate by the State or Federal regulations.

“Waiver of Administrative Disqualification Hearing” means a waiver sent to individuals suspected of intentional Program violation which presents the individual with the option of waiving his or her right to an administrative hearing, essentially accepting the appropriate disqualification without necessarily admitting the violation.

\*\*\*\*\*

#### **4.200 APPLICATIONS AND RECERTIFICATIONS**

THIS SECTION SPECIFICALLY DISCUSSES PROCESSING OF INITIAL APPLICATIONS AND APPLICATIONS FOR RECERTIFICATION.

\*\*\*\*\*

##### **4.201 APPLICATION PROCESSING**

- A. County offices shall not apply additional conditions or processing requirements that are beyond those prescribed by State Food Assistance rules. The application process includes the filing and completion of an application form, being interviewed, and verifying certain information. Signs shall be posted in certification offices that explain the application processing standards and the right to file an application on the day of initial contact. Similar information about same-day filing shall be included in outreach materials and on the application form.
- B. The local office shall act promptly on all applications and provide Food Assistance benefits retroactive to the month of application to those households that have completed the application process and have been determined to be eligible.
- C. Applications will be screened as they are filed, or as individuals come in to apply, to determine eligibility for expedited service or for normal processing. Applicants entitled to expedited service shall be informed immediately and given a same-day interview, whenever possible. Those eligible for expedited processing shall be served in accordance with Sections 4.205.1 and 4.205.11 while those eligible for normal processing shall be served in accordance with Section 4.205.2. Local offices shall not conduct any pre-eligibility screening process prior to securing the date of application.
- D. The household may voluntarily withdraw its application at any time prior to a determination of eligibility. ~~After any determination of eligibility has been made, either through the use of the automated system or outside of the automated system, the local office cannot choose to withdraw the application.~~ Once a determination of eligibility is made, the household may voluntarily terminate its participation. Any reason given by the household for withdrawal or termination shall be documented in the case file. A Notice of Action form, indicating voluntary withdrawal of application or voluntary termination of eligibility, shall be

sent to the household within ten (10) calendar days of the decision, to confirm the action taken. The household shall be advised of its right to reapply at any time subsequent to a withdrawal.

- E. No household shall have its Food Assistance benefits denied solely on the basis of its application to participate in another program being denied or its benefits under another program being terminated, without a separate determination by the local office that a household failed to satisfy a Food Assistance Program eligibility requirement.
- F. ~~The State has entered into an agreement with the Social Security Administration (SSA) whereby each SSA office will complete and forward Food Assistance applications from households comprised of only persons who receive Supplemental Security Income (SSI) or persons applying for SSI provided the household is not participating in the Food Assistance Program and has no applications pending. After interviewing the household and obtaining available verification, the SSA office will forward the application to the appropriate local office for eligibility determination. Residents of public institutions who apply for SSI prior to their release from an institution under the Social Security Administration prerelease program for the institutionalized shall be permitted to apply for Food Assistance at the same time they apply for SSI. See Sections 4.202.3 through 4.202.31 for the provisions regarding the SSA accepting applications and forwarding them to the county department.~~

~~The agreement also provides that counties may outstation eligibility worker(s) at district SSA offices, in accordance with Section 4.202.33. In the event a county desires to outstation an eligibility worker(s) in the local SSA office to process Food Assistance applications, it would be necessary for the county to request the State to negotiate an appropriate revision of the agreement.~~

- ~~F. G.~~ Households denied Food Assistance that have an SSI application pending shall be informed on the notice of denial of the possibility of categorical eligibility if they become SSI recipients. Residents of public institutions who apply jointly for SSI and Food Assistance benefits prior to their release from the institution shall not be eligible for Food Assistance until the individual has been released from the public institution.
- G. H. Local offices shall record in the automated system racial and ethnic data provided by an applicant household. The purpose of obtaining this information is not to affect the eligibility or the level of benefits, but rather to ensure that Program benefits are distributed without regard to race, color, or national origin. In those instances when the information is not provided voluntarily by the household on the application form, the local office shall use alternative means of collecting the ethnic and racial data on households, such as by observation during the interview. Under no circumstance should an eligibility worker challenge or change a self-declaration made by a household member.

\*\*\*\*\*

#### **4.202 FILING AN APPLICATION**

- A. Regardless of what type of application system is used, the local office must provide a means for applicants to immediately begin the application process. The household shall be advised it may file an incomplete application form as long as the form contains a legible name, address, and is signed by a responsible household member or the household's authorized representative. SIGNATURES INCLUDE HANDWRITTEN SIGNATURES, ELECTRONIC SIGNATURE TECHNIQUES, RECORDED TELEPHONIC SIGNATURES, OR DOCUMENTED GESTURED SIGNATURES. A VALID HANDWRITTEN SIGNATURE INCLUDES A DESIGNATION OF AN X. Local offices shall accept applications for Food Assistance during normal business hours and shall not be RESTRICTED restrictive to a certain day or time of day. The household shall be advised that it need not be interviewed before filing an application. The county department shall inform applicants that receiving Food Assistance will have no bearing on any other program's time limits that may apply to the household.
- B. Persons who request information for Food Assistance must be advised of expedited service provisions and encouraged to submit an application so that eligibility processing can begin. County local offices shall encourage the filing of an application form on the same day the household or its representative contacts the local office in person or by telephone and expresses interest in obtaining Food Assistance, or indicates the household is without food or the means to obtain food.

- C. Local offices shall make application forms readily accessible to applicant households, as well as to groups and organizations, and shall also provide an application form to anyone who requests the form. If a household contacting the local office by telephone does not wish to come to the appropriate office to file the application that same day and instead prefers receiving an application through the mail, the local office shall mail an application form to the household on the same day the telephone request is received. An application shall also be mailed on the same day a written request for Food Assistance is received.

Application forms shall be made available in Spanish, or other appropriate languages for use in those counties where it has been determined in conjunction with the State local office that there are a significant number of households without an adult member fluent in English.

- D. The STATE OR local office shall annotate the application form by recording the date the form was received and processing time begins. ~~ALL VALID APPLICATIONS Applications signed through the use of electronic signature technique or applications containing a handwritten signature, which are PAPER, transmitted by fax or other electronic transmissions, are acceptable as a valid application when received by the local office.~~ When an application is submitted through such means outside of business hours, the application filing date shall be recorded as the next business day.
- E. Households must file Food Assistance applications by submitting the forms in person, through an authorized representative, by fax or other electronic transmission, by mail or by completing an on-line electronic application. ~~The local office must provide households that complete an on-line electronic application in person at the local office the opportunity to review the information that has been recorded electronically and must provide the household with a copy of the information for its records. Local offices shall advise applicants if a fax machine or other electronic transmission is available for the submission of an application.~~ THE LOCAL OFFICE MUST PROVIDE THE HOUSEHOLD WITH A COPY OF THEIR COMPLETED APPLICATION UPON THE REQUEST OF THE CLIENT. A COPY OF A COMPLETED APPLICATION CAN BE A COPY OF THE INFORMATION PROVIDED BY THE CLIENT THAT WAS USED OR WILL BE USED TO DETERMINE A HOUSEHOLD'S ELIGIBILITY AND BENEFIT ALLOTMENT. AT THE OPTION OF THE HOUSEHOLD, THIS MAY BE PROVIDED IN AN ELECTRONIC FORMAT.
- F. Applications are valid for a period of sixty (60) calendar days. Households reapplying for benefits following a determination of ineligibility more than sixty (60) calendar days from the date of the original application date must submit a new application.
- G. When households contact the wrong certification office within a county either in person or by telephone, the certification office shall give the household the address and telephone number of the appropriate office. The certification office shall also offer to forward the household's application to the appropriate office that same day. If the household has mailed its application to the wrong office within a county, the receiving office shall mail the application to the appropriate office on the same day or forward it the next day by any means that ensures the application will arrive at the appropriate office the same day it is forwarded. An application shall be considered filed and processing standards shall begin the day it is received by any local office in the correct county. A county that receives an application that belongs to another county may secure the application date, process the application to completion, issue the household an EBT card, and then transfer the case to the correct county once the final eligibility decision is made.

\*\*\*\*\*

#### **4.202.2 Application Filing by Ineligible Non-Citizens**

The ineligibility of certain non-citizens for Program benefits will not prohibit the remaining household members from applying for and receiving Food Assistance. ~~Ineligible non-citizens living in an applicant household shall not be considered eligible household members for Food Assistance purposes; however the ineligible non-citizen's income and resources are considered in the household's eligibility determination and benefit allotment.~~

~~When the eligible members of a household are all unemancipated minors and the only adult is an ineligible non-citizen, the ineligible non-citizen may make application on behalf of the eligible minors~~

~~without being considered as having applied for him/herself. However, if there is any other eligible adult of an unemancipated minor in the household, even though they would not normally be considered the household head, that eligible person should make application as the head of household.~~

\*\*\*\*\*

#### ~~4.202.3~~ SSI Households Submitting Food Assistance Applications to the SSA

- A. Whenever a member of a household consisting only of SSI applicants or recipients transacts business at an SSA office, the member has a right to make a household application for Food Assistance at the SSA office or the local office. The SSA office is not required to accept applications for SSI applicants or recipients who are not members in a household consisting entirely of SSI recipients unless a county has outstationed a worker at the SSA office. The SSA office will refer non-SSI households to the correct local office. An applicant or recipient of SSI shall be informed at the SSA office of the availability of benefits under the Food Assistance Program and the availability of the Food Assistance application at the SSA office. The SSA office shall also complete joint SSI and Food Assistance applications for residents of public institutions who apply for SSI prior to their release from the institutions. The applicants shall be permitted to apply for Food Assistance at the same time that they apply for SSI.
- B. The SSA office will accept and complete Food Assistance applications from SSI households and forward them, within one working day after receipt of a signed application, to the appropriate county local office. The SSA will use the Food Assistance application. The application will be transmitted to the local office with documentation of verification obtained. When an SSA office sends a Food Assistance application and supporting documentation to an incorrect local office, the application and documentation shall be sent to the correct office within one working day.
- C. The SSA office is required to prescreen all Food Assistance applications for entitlement to expedited service and shall mark "expedited processing" on the first page of all applications of households that appear to be entitled to such processing. The SSA will inform households which appear to meet the criteria for expedited service that benefits may be issued a few days sooner if the household applies directly at the local office. The household may take the application from the SSA office to local office for screening, and interviewING, and processing of the application. Each local office shall furnish the SSA office(s) serving its geographical area with a street map and/or map defining its boundaries together with the addresses of the certification offices in the project area.
- D. The local office shall prescreen all applications received from the SSA office for entitlement to expedited service on the day the application is received at the correct local office. All households entitled to expedited service shall be certified in accordance with Sections 4.205.1 and 4.205.11, except that the expedited processing time standard shall begin on the date the application is received at a local office in the correct county. To prevent duplication, the local office shall develop and implement a method to determine if members of SSI households whose applications are forwarded by the SSA office are currently participating in the Food Assistance Program.
- E. The SSA office shall refer non-SSI households and those in which not all members have applied for or received SSI to the correct local office. The local offices shall process those applications in accordance with the normal and expedited application processing standards and procedures. Applications from such households shall be considered as filed on the date the signed application is taken at a local office in the correct county.

\*\*\*\*\*

#### ~~4.202.31~~ SSI Telephone Applications and Recertifications Completed by the SSA

- A. If an SSA office takes an SSI application or redetermination on the telephone from a member of a pure SSI household, a Food Assistance application shall also be completed during the telephone interview. ~~In these~~

cases, the Food Assistance application AND shall be mailed by the SSA office to the applicant for signature for return to the SSA office or to the local office. The SSA office shall then forward any Food Assistance applications it receives to the local office. The local office shall not require the household to be interviewed again. The local office may contact the household further to obtain additional information for the eligibility determination in accordance with Section 4.204, E.

- B. The SSA office shall mail information of the client's right to file a Food Assistance application at the SSA office if they are members of a pure SSI household, or at their local office, and their right to an out-of-office Food Assistance interview to be performed by the county department if the household has a hardship condition as outlined in Section 4.204.1, "Waiver of Office Interview."
- C. For households consisting entirely of applicants for, or recipients of, SSI who apply for Food Assistance certification at an SSA office, the application shall be considered filed for normal processing purposes when the application is received by the SSA.

\*\*\*\*\*

#### **4.202.32 SSI and Food Assistance Joint Processing**

- A. In those instances where the application has been completed at the SSA office, the local office shall ensure that information required by Section 4.502 is verified prior to certification for households initially applying, and households entitled to expedited certification services shall be processed in accordance with Sections 4.205.1 and 4.205.11. In those cases where the SSI household submits its Food Assistance application to the local office rather than through the SSA office, all verification, including that pertaining to SSA program benefits, shall be provided by the household, by SDX or BENDEX, or obtained by the local office rather than being provided by the SSA.

For those cases in which SSI and Food Assistance are being processed simultaneously, the local office shall question the household and/or use SDX listings to obtain information on SSI determinations. If the information cannot be obtained through SDX listings and/or questioning the households, a written inquiry may be made to the SSA office to obtain information of the status of SSI determinations. Within ten (10) calendar days of learning of the determination of the SSI application, the local office shall take action in accordance with Section 4.604.

- B. The expedited processing time standard for applicants who filed prior to the release from a public institution will begin on the date that the individual is released from the public institution. The SSA shall notify the local office of the date of release of the applicant from the institution. Benefits shall be restored back to the date of an applicant's release from a public institution if, while in the institution, the applicant jointly applied for SSI and Food Assistance, but the local office was not notified on a timely basis of the applicant's release.
- C. The SSA office shall refer non-SSI households and those in which not all members have applied for or received SSI to the correct local office. The local office shall process those applications in accordance with the normal and expedited application processing procedures. Applications from such households shall be considered as filed on the date the signed application is taken at a local office in the correct county.

\*\*\*\*\*

#### **4.203 HEAD OF HOUSEHOLD AND AUTHORIZED REPRESENTATIVES**

Application for participation shall be made in the name of the household, by the head of the household, the spouse, another household member, or an authorized representative. Households wishing to participate in the Program must make this desire known through the application process and provide the certification office with enough information regarding household income and other eligibility factors to enable the certification worker to make a determination of eligibility. Refusal by the household to cooperate in providing the specifically stated information necessary for an eligibility determination, or withdrawal of application, is grounds for denial of the application. See Section 4.604, H.

\*\*\*\*\*



#### 4.203.1 Designating a Head of Household

- A. The local office shall allow a household TO SELECT AN ADULT PARENT OF CHILDREN (OF ANY AGE) LIVING IN THE HOUSEHOLD, OR AN ADULT WHO HAS PARENTAL CONTROL OVER CHILDREN (UNDER 18 YEARS OF AGE) LIVING IN THE HOUSEHOLD, AS THE HEAD OF HOUSEHOLD PROVIDED THAT ~~with adult parents and children, regardless of age or an adult with parental control over the children (less than eighteen years of age), to select an adult parent of children as its head when all adult members making application agree to the selection.~~ The household may make this designation each time the household is certified for participation, but may not change the designation during a certification period unless there is a change in the composition of the household.
- B. ~~Once an eligible household (household with an adult parent of children) selects its head, no further head of household designation may be imposed by the local office.~~ THE LOCAL OFFICE SHALL NOT USE THE HEAD OF HOUSEHOLD DESIGNATION TO IMPOSE SPECIAL REQUIREMENTS ON THE HOUSEHOLD, SUCH AS REQUIRE THAT THE HEAD OF HOUSEHOLD, RATHER THAN ANOTHER RESPONSIBLE MEMBER OF THE HOUSEHOLD, APPEAR AT THE LOCAL OFFICE TO MAKE APPLICATION FOR BENEFITS. If the household is not able to select its head of household, or an eligible household does not choose to select its head of household, the local office may make a reasonable determination of the head of household with an understanding that the head of household is usually the household member who has the most knowledge of the household's financial circumstances. Such individual must be a household member, except that, if the only adult in the Food Assistance household is a non-household member, such individual may make application on behalf of the household of minors as the authorized representative.

\*\*\*\*\*

#### 4.203.2 Designating Authorized Representatives

- A.——The head of the household, spouse or any other responsible household member may designate in writing someone to act on behalf of the household to make an application, obtain an EBT card, and/or use the EBT card to purchase food for the household. In instances where a household is in need of an authorized representative but is unable to obtain one, the local office will assist such a household in finding an authorized representative. The certification office will assure that authorized representatives are properly designated; that is, the name of the authorized representative and the justification for appointing a person outside the household shall be maintained as part of the household's permanent case record.

##### 1.——Making an Application

~~When the head of the household or spouse cannot make an application for participation, another responsible household member may apply. An adult non-household member may act as the authorized representative. When designated in writing by the head of the household, spouse, or other responsible household member,~~  
t The authorized representative must be a person who is sufficiently aware of relevant household circumstances. Whenever possible, the head of the household or spouse should prepare or review the application even though another household member or an authorized representative is the person interviewed.

The local office shall inform the household that the household will be held liable for any over-issuance which results from erroneous information given by the authorized representative, ~~except in the cases where the erroneous information is provided by an authorized representative of a drug and alcohol treatment center or group living facility.~~ If a household member is found guilty of intentional program violation/fraud because of erroneous information given by an authorized representative, only the authorized representative will be held liable and not the household. Drug and alcohol treatment centers and group living facilities shall be responsible for any misrepresentation of intentional program violation/fraud which they knowingly commit in the certification of their residents.

##### 2.——Obtaining an EBT Card

An authorized representative may be designated to obtain an EBT card for the household at the time the household applies for participation. The authorized representative responsible for obtaining an EBT card may be the same individual designated to make application for the household or may be another individual. Even if a household member is able to make an application and obtain an EBT card, the household should be encouraged to name an authorized representative responsible for obtaining an EBT Card in case of illness or other circumstances which might result in an inability to obtain Food Assistance benefits.

3.——Using an EBT Card

The authorized representative may use the household's EBT card to purchase food for the household's consumption provided the authorized representative is acting with the full knowledge and consent of the household.

4.——Restrictions

An authorized representative may act on behalf of more than one household and limits shall not be placed on the number of households an authorized representative may represent, but such an arrangement should be approved only if there is a bona fide need. In determining such need, consideration shall be given to the proximity of the households to one another, the distance to the certification or issuance office, the availability of transportation, and the health of the household members involved.

In the event employers, such as those that employ migrants, are designated as authorized representatives or that a single authorized representative has access to multiple EBT cards, the certification office should make certain that:

- a.——The household has freely requested the assistance of the authorized representative;
- b.——The household's circumstances are correctly stated and the household is receiving the correct amount of benefits; and,
- e.——The authorized representative is properly using the EBT card.

B.——In the event the only adult living with a household is classified as a non-household member, that individual may be the authorized representative for the minor household members.

~~C.——Residents of drug or alcohol treatment centers shall participate in the Program through use of an authorized representative who shall be an employee of, and designated by, the private nonprofit organization. Drug or alcohol treatment centers shall receive and spend the Food Assistance benefits for food prepared by and served to the residents of the center who are participating in the Food Assistance Program.~~

~~D.——Residents of group living arrangements shall participate through an authorized representative employed and designated by the group living arrangement unless the group living arrangement determines the resident is capable of acting on his/her own behalf. The head of a group living arrangement which acts as the authorized representative for the residents may either receive and spend the residents' benefits for food that will be prepared by and served to each eligible resident or allow each resident to spend all or any portion of the benefits on his or her own behalf.~~

\*\*\*\*\*

#### 4.204 Interviews

A. Interview Requirements

All applicant households shall undergo a face-to-face or phone interview with a qualified eligibility worker prior to initial certification and at least once every twelve (12) months. A household certified for twenty-four (24) months is not required to complete an interview at the 12 month interim. The applicant may bring INCLUDE any person(s) he or she chooses to FOR the interview. The individual interviewed may be the head of the household, spouse, or any other responsible member of the household, or an authorized representative. A face-to-face interview may be conducted at the county local office or a mutually acceptable location, including the household's residence UPON HOUSEHOLD REQUEST. If the interview is to be conducted at the residence, it must be scheduled in advance. The interview shall be conducted as an official and confidential discussion of household circumstances. The applicant's right to privacy shall be protected during the interview. Facilities shall be adequate to preserve the privacy and confidentiality of the interview.

The eligibility worker shall not simply review the information entered on the application, but shall explore and resolve with the household unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview, including the appropriate application processing standard and the household's responsibility to report changes. The interviewer must advise households which are applying for other public assistance programs that any time limits and other requirements for the receipt of other public assistance do not apply to the receipt of Food Assistance. Households may still qualify for Food Assistance if they have reached a time limit, begun working, or lost benefits from another program for another reason.

Upon determination that a person should be referred to an Employment First Unit, the county department shall explain to the applicant the pertinent work requirements, the rights and responsibilities of work registered household members, and the consequences of failure to comply. The local office shall provide a written statement of these requirements to each work registrant in the household and to each previously exempt or new household member when that person becomes subject to the work registration and at recertification.

\*\*\*\*\*

#### 4.204.1 Waiver of Office Interview

- A. ~~The household shall be notified that the face-to-face interview will be waived in favor of a telephone interview or home visit on a case-by-case basis because of a household hardship, as listed below in D, which may prevent the applicant from coming to the office.~~

~~The local office shall conduct a telephone interview or a home visit in cases in which the office interview is waived. Home visits shall be scheduled in advance with the household. Waiver of the office interview does not exempt the household from the verification requirements, although special procedures may be used, and shall not affect the household's certification period. The local office shall document in the case record the reason that a requested waiver was granted or denied.~~

- B. ~~The office interview shall be waived if requested by any household which is unable to appoint an authorized representative and which has no household members able to come to the local office because they are sixty (60) years of age or older, or have a mental or physical disability, or are residents of a shelter for battered women and children.~~

- C. ~~The local office shall waive the office interview on a case-by-case basis for a household whenever desirable, including households that are unable to appoint an authorized representative and those households that do not contain A member capable of coming to the local office because of hardships. The local office shall document in the case file the reason that a requested waiver was granted or denied.~~

- D. ~~Hardship conditions include, but are not limited to:~~

- ~~1. Illness or the need to care for someone;~~
- ~~2. Work schedule;~~

3. ~~Loss of pay or fear of loss of job;~~
4. ~~The household members are sixty (60) years of age or older;~~
5. ~~The household member is mentally or physically disabled;~~
6. ~~The household has an adult who has earned income;~~
7. ~~The household has an adult in school or training;~~
8. ~~The household resides in a rural area;~~
9. ~~Prolonged severe weather;~~
10. ~~Transportation difficulties, including if the household does not own a vehicle or does not have transportation available;~~
11. ~~Family violence or harassment or stalking;~~
12. ~~Work hours or employment training hours; and,~~
13. ~~Any other challenge which precludes an in-office interview~~

\*\*\*\*\*

#### 4.205 Application Processing Standards

All newly certified households, except those that are given expedited service, shall be given an opportunity to participate no later than thirty (30) calendar days following the date the application was filed. Households entitled to expedited service shall have benefits available no later than the seventh calendar day following the date of application. For application processing purposes, day “one” (1) is the first calendar day after the application is received by a local office in the correct county.

If the local office does not determine a household’s eligibility and provide an opportunity to participate within thirty (30) calendar days following the date the application was filed, the office shall determine whether the delay was caused by failure to act on the part of the household or on the part of the local office as outlined in Sections 4.205.3 through 4.205.4.

~~For more information about authorizing and accessing benefits, refer to 4.207, “Authorizing Benefits.”~~

\*\*\*\*\*

##### 4.205.1 Processing Standards for Expedited Service

A. ~~The following households are entitled to expedited service:~~

1. ~~Migrant or seasonal farm worker households whose liquid resources do not exceed one hundred dollars (\$100) and who are destitute of income as defined in Section 4.406.~~
2. ~~Households whose liquid resources do not exceed one hundred dollars (\$100) and who reasonably expect to have less than one hundred fifty dollars (\$150) of gross monthly income in the calendar month of application.~~
3. ~~Eligible households whose combined monthly gross income and liquid resources are less than the household’s anticipated monthly rent/mortgage and utilities. The appropriate utility standard, as defined in Section 4.407.31, shall be utilized when determining a household’s utility costs.~~

B. — Households eligible for expedited service shall be able to access EBT benefits no later than the seventh (7<sup>th</sup>) calendar day following the date of application.

1. — If a household is entitled to expedited service the local office shall conduct the interview, unless the household cannot be reached, and complete the application process within seven (7) calendar days.
2. — Households entitled to expedited service shall complete an interview prior to any determination of eligibility. If a household fails to complete the required interview within seven (7) calendar days following the date the application for assistance was filed, the household is no longer entitled to expedited benefits by the seventh (7<sup>th</sup>) day following the date of application.
3. — ~~In instances in which the household is entitled to expedited service and to a waiver of the office interview and a proxy cannot be secured to complete the application process, the county department shall make all reasonable efforts to send a staff member or volunteer to the household's residence to complete the application within the six (6) calendar day period.~~

C. — Households that apply for initial benefits after the fifteenth (15<sup>th</sup>) of the month under the expedited service procedures, which have completed the application and provided all verification within the expedited timeframe and have been determined eligible to receive benefits for the initial month and the subsequent month, shall receive the application month's prorated allotment and the next full month's allotment at the same time.

Households applying for initial benefits after the fifteenth (15<sup>th</sup>) of the month for which verification has been postponed shall have the second month's benefits and the prorated allotment available on the seventh (7<sup>th</sup>) calendar day. The household must provide all postponed verification before the third month's benefits can be issued.

D. — Households not initially screened as requiring expedited service, but subsequently determined to be entitled to such service, shall be entitled to the expedited processing timeframes from the date such a determination was made.

E. — ~~In those instances where the application was completed at an SSA office, the expedited processing time standards shall begin on the date the local office received the Food Assistance application or the date that an individual was released from an institution if that household applied for SSI and Food Assistance prior to the release from an institution.~~

E. F. If Program benefits are reduced, suspended, or cancelled in accordance with Section 4.904.4, households eligible for expedited service shall receive expedited service in accordance with the following procedures:

1. — Those households that receive expedited service in the month(s) in which reductions are in effect and are determined to be eligible shall be issued allotments that are reduced in accordance with the reduction in effect. These reduced allotments shall be made available to the households within the timeframes specified in this section.
2. — Those households that receive expedited service in month(s) in which suspensions are in effect and are determined to be eligible shall have benefits issued to them within the timeframes specified in this section. However, if the suspension is still in effect at the time issuance is to be made, the issuance shall be postponed until the suspension is ended.
3. — Households eligible to receive expedited processing and who apply for Program benefits during months in which cancellations are in effect shall receive expedited service. However, the deadline for completing the processing of such cases shall be five (5) calendar days or the end of the month of application, whichever date is later. All other rules pertaining to expedited service contained in this section shall be applicable to

these cases.

\*\*\*\*\*

#### 4.205.11 Special Provisions for Expedite Service

A. Households requesting, but not entitled to, expedited service shall have their applications processed according to normal processing standards ~~as outlined in Section 4.205.2.~~

B. The local office shall use the following procedures for expediting service:

1. Prior to certification, the identity of the applicant shall be verified ~~through a collateral contact, electronic information provided by the Colorado Department of Revenue, Division of Motor Vehicles (DMV) or by readily available documentary evidence.~~

~~Refer to Section 4.505.1 for acceptable sources of identification verification.~~

2. Prior to certification of expedited benefits, all reasonable efforts shall be made to verify residency, income, or lack thereof, and other factors OF ELIGIBILITY ~~required in Section 4.502 "through collateral contacts or readily available documentary evidence.~~ However, verification shall be postponed if it cannot be obtained in sufficient time to meet the expedited processing standards. ~~If verification required in Section 4.502 or verification of questionable information is postponed,~~ the household shall be certified for expedited benefits, if determined eligible, for the month of application or, for those households applying after the fifteenth (15<sup>th</sup>) of the month, the month of application and the subsequent month.

- a. Except for migrant households applying after the fifteenth (15<sup>th</sup>) of a month, when a household is certified for expedited benefits for an initial month of application and the subsequent month and verification is postponed, a request for verification form shall be annotated to indicate what verification is required in order for further benefits to be issued.

- b. When households that apply for benefits on or before the fifteenth (15<sup>th</sup>) of the month provide the required postponed verification, the local office shall issue the second month's benefits within five working days from receipt of the verification or the first of the second month, whichever is later.

Households that apply after the fifteenth (15<sup>th</sup>) of the month and provide the postponed verification shall be issued the third month's benefits within five working days from receipt of verification, or the first of the third month, whichever is later.

Except for migrant households needing out-of-state verification, when the postponed verification is not completed within thirty (30) calendar days from the date of application, the local office shall terminate the household's participation on the thirtieth (30<sup>th</sup>) calendar day without providing a notice of adverse action.

- c. Migrants shall be entitled to a postponement of out-of-state verification only once each season. If a migrant household requesting expedited service has already received this exception during the current season, the local office shall grant a postponement of out-of-state verification only for the initial month's issuance and not for the second (2<sup>nd</sup>) month's issuance. Migrant households eligible for expedited service and applying after the fifteenth (15<sup>th</sup>) of a month which are assigned certification periods of longer than one month shall be

issued a request for verification notifying them that they shall provide postponed verification from sources within the state before a second month's benefits are issued and shall provide all verification from out-of-state sources before being issued benefits for the third month. The notice shall also advise the household that if verification results in changes in the household's eligibility or level of benefits, such changes shall be acted on without providing an advance notice of adverse action.

- C. There is no limit to the number of times a household can be certified under expedited procedures, as long as prior to each expedited certification, the household either completes the verification requirements that were postponed at the last expedited certification or the household was certified under normal processing standards since the last expedited certification.

\*\*\*\*\*

#### 4.205.2 Normal Processing Standards

- A.——The county local office shall process applications as expeditiously as possible and provide eligible households a written notification of their eligibility. The applicant household must receive a Notice of Action form, which will indicate the household's period of eligibility and Food Assistance allotment. Eligible households shall be provided an opportunity to obtain benefits as soon as possible, but no later than thirty (30) calendar days following the date the application was filed. Except for applications filed at an SSA office, an application shall be considered filed the day a local office in the correct county receives a signed VALID application containing the applicant's name, address, and signature. ~~The application filing date for applications submitted at an SSA office is outlined in Section 4.202.31, C; the expedited processing time frames for such applications shall begin the day a local office in the correct county receives the application (see Section 4.202.3, D). Residents of institutions who apply prior to the release from the institution shall have the application date based on the date of release from the institution.~~

Households found to be ineligible shall be sent a Notice of Action form denying the household as soon as possible, but no later than thirty (30) calendar days following the date the application was filed. Applicant households that refuse to cooperate in completing the application process shall be denied at the time of refusal. For a determination of refusal to be made, the household must BE ABLE TO COOPERATE, BUT CLEARLY refuse to take actions that are required to complete the application process.

- B.——In cases where verification is incomplete, the local office shall provide the household with a statement of required verification on the state-prescribed notice form and offer to assist the household in obtaining the required verification. The office shall allow the household ten (10) calendar days to provide the missing verifications, unless the household missed the first appointment. If the household misses the first appointment and the interview cannot otherwise be rescheduled until after the twentieth (20<sup>th</sup>) day but before the thirtieth (30<sup>th</sup>) day following the date the application was filed, the household must appear for the interview, bring verification, and register members for work by the thirtieth (30<sup>th</sup>) day. A household can be found ineligible or eligible for the month of application and for the following month based on one (1) application, if sufficient information for such determination is available. The state-prescribed notice form shall reflect specific months of eligibility and ineligibility.
- C.——Applications are valid for a period of sixty (60) calendar days. Households reapplying for benefits following a determination of ineligibility more than sixty (60) calendar days from the date of the original application must submit a new application.
- D.——~~In those instances where the application was completed at an SSA office, the local office shall make an eligibility determination and issue Food Assistance benefits to eligible SSI households within thirty (30) calendar days following the date the application was received by the SSA. Applications shall be considered filed for normal processing purposes when the signed application is received by SSA.~~

\*\*\*\*\*

#### 4.205.4 Delays in Processing Beyond Sixty (60) Days

- A.——If the local office is at fault for not completing the application process by the end of the second thirty (30) day period, and the case record is otherwise complete, the office shall continue to process the original application until an eligibility determination is made. If the household is found to be eligible, and the local office was also at fault for the delay in the initial thirty (30) days, benefits retroactive to the month of application shall be provided to the household. However, if the delay during the initial thirty days was the household's fault, benefits shall only be provided back to the month following the month of application (see Section 4.207.2).
- B.——If the local office is at fault for not completing the application by the end of the second thirty (30) day period, but the case record is insufficiently complete to make an eligibility determination, the office shall deny the case and request the household to file a new application, if desired.
- C.——~~If found eligible during the sixty (60) calendar day period, benefits to the household would be calculated from the month of application, provided the local office was also at fault for the delay in the initial thirty (30) day period. Benefits would be calculated from the month following the month of application if the household was at fault for the initial delay. The benefits would be prorated if action was taken after the thirty day time frame but still within the second month. If the household is at fault and action is not taken until the third calendar month following the month of application, the benefits will be provided only for the third calendar month. If the action is taken after the 1<sup>st</sup> day in the third calendar month but within the sixty day period, the benefits will be prorated from the date the household takes the required action for the third month.~~
- C. D. If the household is at fault for not completing the application process by the end of the second thirty (30) day period, the application shall be denied and a new application required if the household wishes to participate. The household shall not be entitled to any lost benefits even if the delay in the initial thirty day period was the fault of the local office.

\*\*\*\*\*

#### **4.206 CATEGORIES OF ELIGIBILITY**

- A. Households applying for Food Assistance must be determined eligible using one of the following categories of eligibility: Basic Categorical Eligibility (BCE), Expanded Categorical Eligibility (ECE) or Standard Eligibility.
- B. Food Assistance households that are applying for or receiving benefits from other assistance programs in addition to Food Assistance are still required to meet the resource limits and follow the reporting and verification requirements of the other program. Requests for information and verification to determine eligibility for other programs shall not affect or delay the determination of Food Assistance eligibility.
- C. Eligibility
1. Basic Categorical Eligibility (BCE)
    - a. Basic categorically eligible households are:
      - 1) Households in which all members receive, or are authorized to receive, Supplemental Security Income (SSI) or benefits from the Colorado Works Program, Old Age Pension (OAP), Aid to the Needy Disabled (AND), Aid to the Blind (AB) or a combination of these benefits. The Colorado Works, SSI, OAP, and/or AB program(s) need only to authorize benefits for participants in order for the household to be considered for basic categorical eligibility. Individuals who are authorized to receive a benefit from one or more of these programs, but who are not paid such benefits because the grant is less than a minimum benefit or the benefits are suspended or are being recouped, are still considered eligible under basic categorical eligibility rules.



Households not receiving, or authorized to receive, Temporary Assistance for Needy Families (TANF) Title IV-A or SSI benefits, who are entitled to Medicaid only, shall not be considered SSI or Title IV-A participants.

- 2) A household in which at least one (1) member receives services from the Family Preservation Program. This determination must be documented in the case record.
  - b. Households eligible under basic categorical eligibility have been deemed to have met the income and resource requirements of the program that confers eligibility; therefore, no further verification is required beyond that gathered by the program that confers eligibility. However, the agency must collect and verify eligibility factors. ~~in accordance with Sections 4.300 and 4.502~~ If these factors are not already collected and verified by the other program, are considered questionable, or are unavailable to the Food Assistance Program. This includes:
    - 1) Net income;
    - 2) Gross income;
    - 3) Resources;
    - 4) Residency;
    - 5) Social Security Number;
    - 6) Sponsored non-citizen information.
  - c. A household cannot be considered under basic categorical eligibility rules if, at the time of application:
    - 1) Any member is disqualified for an Intentional Program Violation of the Food Assistance Program.
    - 2) Any member has been convicted of a drug-related felony where Food Assistance benefits were used to purchase drugs.
  - d. Households that are ineligible for Food Assistance benefits under basic categorical eligibility rules shall have their eligibility determined under expanded or standard eligibility rules.
2. Expanded Categorical Eligibility (ECE)
- a. Expanded categorical eligibility households are:
    - 1) Households with a combined gross income at or below two hundred percent (200%) of the federal poverty level; and
    - 2) Households who have been authorized to receive a non-cash Temporary Assistance to Needy Families/Maintenance of Effort (TANF/MOE) funded service designed to further TANF Purpose Four (4) by “encouraging the formation and maintenance of two- parent families.” Language regarding the non-cash TANF/MOE funded program shall be provided on the application, recertification application, periodic report form, and/or the statement of facts.
  - b. Households eligible under expanded categorical eligibility have been deemed to

have met the income and resource requirements of the program that confers eligibility; therefore, no further verification is required beyond that gathered by the program that confers eligibility. However, the agency must collect and verify eligibility factors in accordance with Sections 4.300 and 4.502. If these factors are not already collected and verified by the other program, are considered questionable, or are unavailable to the Food Assistance Program. This includes:

- 1) Net income;
  - 2) Gross income;
  - 3) Resources;
  - 4) Residency;
  - 5) Social Security Number;
  - 6) Sponsored non-citizen information
- c. A household's eligibility cannot be determined using expanded categorical eligibility rules if, at the time of application:
- 1) Any member is disqualified for an Intentional Program Violation of the food assistance program.
  - 2) Any member has been convicted of a drug-related felony where Food Assistance benefits were used to purchase drugs.
- d. Households that are ineligible for Food Assistance benefits under expanded categorical eligibility rules shall have their eligibility determined under standard eligibility rules.
3. Standard Eligibility (SE)
- a. Standard eligibility rules shall only be applied to the following households:
- 1) Households that include a member who is serving a disqualification for an IPV or a fraud conviction.
  - 2) Households that include a member who has been convicted of a drug- related felony where Food Assistance benefits were used to purchase drugs.
  - 3) Households that do not meet the criteria to be considered under basic or expanded categorical eligibility rules.
- b. Households having their eligibility reviewed under standard eligibility rules must meet the following criteria:
- 1) Households that include a member who is elderly or a person with a disability as defined in Section 4.304.41, C must have a combined net income, after all applicable deductions, at or below one hundred percent (100%) of the federal poverty level. The household must have resources below the limit prescribed in Section 4.408.
  - 2) Households that do not include a member who is elderly or a person with a disability as defined in Section 4.304.41, C must have a combined gross income at or below one hundred thirty percent (130%) of the federal poverty level. After all applicable deductions, the household's

net income must be at or below one hundred percent (100%) of the federal poverty level. The household must have resources below the limit prescribed in Section 4.408.

3) Households must also meet nonfinancial eligibility criteria set out in Section 4.300.

c. Households, as defined in Section 4.304, that are found ineligible under standard eligibility rules shall be considered ineligible for participation in the Food Assistance Program.

D. If the circumstances which allowed the household to meet the criteria to be considered under basic or expanded categorical rules change during the certification period or at the time of recertification or periodic report, the household's eligibility must be re-evaluated according to the appropriate category. If there is insufficient documentation to make an eligibility determination based on the new category of eligibility, the agency shall send the household a request for verification in accordance with Sections 4.604, Action on Reported Changes, and 4.604.1, Verification of Reported Changes.

\*\*\*\*\*

#### 4.208 CERTIFICATION PERIODS

- A. — Certification periods shall conform to calendar months. Households shall be assigned the longest certification period possible based on the predictability of the household's anticipated income and other circumstances. At the expiration of each certification period, entitlement to Food Assistance benefits ends. Further eligibility shall only be established on a newly completed application for redetermination. ~~an interview if one has not been completed within the last twelve months, except for households certified for twenty-four months, and verification as required by Section 4.502.~~ Under no circumstances shall benefits be continued beyond the end of a certification period without a new determination of eligibility. The State-prescribed Notice of Action form provided to the applicant household shall indicate the period of certification if the household is determined to be eligible for benefits.
- B. — ~~The eligibility worker shall use the guidelines given in Section 4.208.1 in determining the appropriate period of eligibility.~~ Upon approval at the time of recertification, a household need not be assigned the same certification period as formerly, but should be assigned a period of time based on a new review of the household's circumstances.
- C. — ~~Certification periods may not be shortened for households unless the agency receives verified information prior to certification that the household will become ineligible for Food Assistance benefits during the certification period.~~
- D. — ~~At the time of certification, the local office shall notify the household of what changes the household is required to report during the certification period. The household shall also be notified that those changes which are required to be reported during the certification period as specified in Section 4.603 must be reported to the local office no later than the tenth (10<sup>th</sup>) of the month following the month in which the change occurred. A household shall report changes in person, by phone, mail, fax, or other electronic device.~~

- C. E. A delinquent PA redetermination shall not delay the Food Assistance recertification beyond the date of the household's Food Assistance certification period ending date. ~~The household must be sent a Notice of Expiration form in accordance with Section 4.209.~~

\*\*\*\*\*

#### **4.208.1 Certification Period Guidelines [Rev. eff. 4/1/16]**

Households will be assigned a ~~three~~ six (6)-month or twenty-four (24) month certification period as follows:

A. ~~Twenty-Four (24) Month Certification Period~~

1. ~~\_\_\_\_\_ A twenty-four month certification period shall be assigned to households that contain only members who are elderly and/or have a disability and have no earned income, as defined in Section 4.403 at the time of certification.~~
2. ~~\_\_\_\_\_ Households certified with a twenty-four month certification period are considered a simplified reporting household and, as such, are required to report changes in accordance with Section 4.603.~~
2. 3. Households that are assigned a twenty-four month certification period must complete a periodic report form at the twelfth (12th) month interval to report any changes that have occurred or to report that no changes have occurred since the most recent certification. The form shall be returned or the case will be closed following the notice of adverse action period. The notice will state the reason for ending the certification period and that ~~the~~ certification period will end following the adverse action period.

B. ~~Six (6) Month Certification Period~~

1. ~~\_\_\_\_\_ A household not assigned a twenty-four month certification period as outlined in subsection A of this section shall be assigned a six month certification period.~~
2. ~~\_\_\_\_\_ Households assigned a six month certification period are considered a simplified reporting household and, as such, are required to report changes in accordance with Section 4.603.~~

\*\*\*\*\*

#### **4.209 RECERTIFICATION PROCESS REQUIREMENTS**

- A. ~~\_\_\_\_\_ In order to enable timely receipt of an application for recertification, the local office shall provide each household with a notice that its certification is about to expire. Benefits will not be continued beyond the end of the certification period unless the household is recertified.~~

A notice of expiration, as prescribed by the State Department, shall be used by offices to advise households that their certification period is ending and that a new application must be filed. ~~The notice of expiration form shall contain at a minimum:~~

1. ~~\_\_\_\_\_ The ending date of the current certification and the consequences of failing to comply with the notice of expiration;~~
2. ~~\_\_\_\_\_ The telephone number the household must call to schedule an interview;~~
3. ~~\_\_\_\_\_ The office location;~~
4. ~~\_\_\_\_\_ Notice that the household must attend any scheduled interview on or after the date~~

~~the application is timely filed;~~

5. ~~— The date the application must be received by the local office in order to avoid a break in the normal issuance cycle;~~

6. ~~— Notice that the household is responsible for:~~

a. ~~— Completing the processing steps of the interview;~~

b. ~~— Rescheduling any missed interview; and,~~

c. ~~— Providing all required verification in order to receive uninterrupted benefits.~~

7. ~~— That the household has ten (10) calendar days to submit missing verification after such verification is requested;~~

8. ~~— The right to request an application and have the application accepted as long as it is signed by a responsible household member or authorized representative and contains a legible name and address;~~

9. ~~— The household's right to file the application by mail, through an authorized representative, electronically, by facsimile, or in person;~~

10. ~~— A statement of the household's right to request a fair hearing; and,~~

11. ~~— A statement that SSI households may reapply at the Social Security office instead of the local office.~~

B. ~~— A household unable to come into the certification office shall be advised of options available, such as the use of an authorized representative or mailing of an application with subsequent telephone interview or home certification. In the case of a household consisting entirely of SSI participants,~~

~~a face-to-face interview shall be waived in accordance with Section 4.204.1.~~

B. C. A household shall receive the notice of expiration not less than thirty (30) calendar days and not more than sixty (60) calendar days prior to expiration of its current certification period. If mailed, the notice shall be sent for the same timely receipt, allowing two (2) extra days for delivery delay.

All households that file on or before the fifteenth (15<sup>th</sup>) of the last month of their certification period will have timely reapplied. Notices which are mailed must specify a date that allows at least two (2) days mail time and still gives the household fifteen (15) calendar days to respond. Households that submit an application for recertification by the date specified on their notice of expiration shall be considered to have timely reapplied to prevent an interruption in Food Assistance benefits.

C. D. The local office shall conduct an interview with an adult member of the household or its authorized representative a minimum of once every twelve (12) months for households certified for six (6) months or less. The local office may choose not to interview the household at each recertification provided the household has completed an interview within the previous twelve (12) months.

The local office shall schedule the interview so that the household has at least ten (10) calendar days to provide verification before the certification period ends. If an interview is required and the household fails to attend the scheduled interview, the local office ~~can~~ MUST mail the household a notice of missed interview and ~~may include~~ a notice of denial at the same time.

The local office may schedule an interview prior to the last month of the certification period or prior to the date the application is timely filed, but the household cannot be denied for failing or refusing to appear

for such an interview. Rather, the local office shall send notice to the household in order to reschedule an appointment for an interview on or after the date the application is timely filed.

- D. E. The recertification process must elicit from the household sufficient information that, when combined with information in the case record, will ensure an accurate determination of eligibility. ~~Information from the household shall be verified in accordance with Section 4.500.~~ The local office shall provide the household with a notice of required verification and the date by which the verification must be provided.

\*\*\*\*\*

#### 4.209.11 — SSI and Food Assistance Joint Processing

~~SSI/Food Assistance jointly processed households which have received a Food Assistance Notice of Expiration shall be entitled to make a timely application for Food Assistance recertification at the SSA office as specified below:~~

- A. ~~In SSA offices where Section 4.202.33 is in effect, the outstationed worker shall accept the application and interview the participant, and the local office shall process the application.~~
- B. ~~In SSA offices where Section 4.202.33 is not in effect, SSA shall accept the application of a pure SSI household and forward the completed application and any available verification to the designated local office. Where SSA accepts and refers the application in such situations, the household shall not be required to appear at a second office interview, although the local office may contact the client to clarify any questionable information if necessary.~~

\*\*\*\*\*

#### 4.301 IDENTITY OF APPLICANT

The identity of the person submitting an application shall be verified EITHER THROUGH INTERFACES, COLLATERAL CONTACT, OR CLIENT PROVIDED VERIFICATION. When an authorized representative applies on behalf of a household, the identity of both the authorized representative and the head of household shall be verified. ~~Identity shall also be verified as a condition of expedited service (see Section 4.502, A, 1). See Section 4.505.1 for acceptable sources of identity verification.~~

\*\*\*\*\*

#### 4.302 SOCIAL SECURITY NUMBER REQUIREMENT

##### A. General Requirements

1. As a condition of Food Assistance eligibility, each member of a household participating in or applying for participation in the Food Assistance Program shall provide a Social Security Number (SSN), or proof that an application for a Social Security Number has been submitted to the Social Security Administration. The local office shall not require any household member to submit a Social Security card or other official documents as a means of verifying a Social Security Number. Household members who provide a SSN shall not be denied benefits for failure or inability to present a Social Security card or other official documentation. If individuals have more than one Social Security Number, all numbers shall be required.
2. The local office shall explain that a member is not required to provide a Social Security Number (SSN), but the failure to provide one shall result in disqualification of the individual(s) for whom the number is not provided. The member who does not provide a SSN shall still be required to provide other eligibility information such as income and resources that will affect eligibility of other members. The local office shall advise individuals that any SSN that is provided voluntarily will be used in the same manner as SSNs of eligible household members. The SSNs will be matched against federal

and state databases to verify information. SSNs will be used for the initial application matching for duplicate participation.

~~3. If the household is being certified under the expedited service provisions, it shall provide a SSN or application for SSN for each person in the household, except for a newborn child, before the first (1<sup>st</sup>) full month of participation.~~

3. 4. If the household member required to provide a SSN either refuses to supply his/her SSN at the time of application or fails to provide the local office with a form or letter as proof of application for a SSN without good cause, he or she shall be ineligible to participate in the Food Assistance Program. The disqualification applies to the individual(s) who refused to cooperate with the application process to obtain the SSN and not the entire household. See Section 4.411.1 for how income and resources of the disqualified individual are counted toward the household. The household member(s) disqualified may become eligible by providing the local office with a Social Security Number, or by providing verification that that an application for a SSN has been submitted to the SSA.

~~B. Individuals and Newborns Without a Social Security Number~~

1. Those household members who do not have the required Social Security Number(s) shall obtain proof of application for a SSN prior to being certified as a member of the household, unless the member is a newborn child. The applicant/recipient shall be instructed to obtain from the SSA proof that he or she has completed an application for a Social Security Number and that the SSA has received that application. A specifically addressed letter from the SSA verifying that application for a SSN has been made is also acceptable proof of application for a Social Security Number. The applicant/recipient shall be instructed to return the completed form as soon as possible to the eligibility worker. A copy of the form shall be maintained in the case record.

a. If the household is unable to provide proof of application for an SSN for a newborn, the household shall provide the SSN or proof of application at its next recertification within six (6) months following the baby's birth. The local office shall determine if the good cause provisions are applicable at the recertification.

b. If a participating household's benefits are reduced or terminated within the certification period because one or more of its members ARE required to provide a SSN is disqualified for failure to meet the SSN requirement, the local office shall issue a Notice of Adverse Action form. The notice shall inform the household that the non-cooperating individual(s) without a SSN is being disqualified, and show the current eligibility and benefit level of the remaining members, as well as a statement that the disqualified member(s) may end disqualification by providing a Social Security number.

2. Household members who provide the eligibility worker with a copy of a form or a letter from SSA, or who demonstrate good cause for not providing the proof from SSA (e.g., difficulty in obtaining birth certificates) shall be allowed to continue to participate in the Food Assistance Program as follows:

a. When an SSA form or letter is received by the local office or good cause for not providing proof is demonstrated, the household member in need of a SSN shall be allowed to participate so long as the household is not at fault for not providing proof of application with the SSA.

b. If the required SSNs are provided by the household, or it is demonstrated that good cause exists for not having applied for a SSN, the household member(s) without a SSN(s) shall remain eligible to participate. If the local office determines that the household is at fault for not having proof of application for the SSN(s), the member(s) without proof of application shall be disqualified and income shall be handled in accordance with Section 4.411.1.

C.——Determining Good Cause for Not Providing a Social Security Number

- 1.——In determining good cause, the local office shall consider information received from the household member and/or the Social Security Administration. Documentary evidence or collateral information that the household has applied for the number or made every effort to supply the Social Security Administration with the necessary information shall be considered good cause. If the household member can show good cause why an application has not been completed in a timely manner, that person shall be allowed to participate until good cause is no longer applicable or until the household's next recertification. If the household member(s) applying for a Social Security Number has been unable to obtain the documents required by Social Security Administration, the eligibility worker should assist the individual(s) in obtaining these documents.
- 2.——If an individual refuses to provide a Social Security Number based on a sincere religious objection, all members of the household may participate in the Program, if otherwise eligible. In these situations, the local office may check with the Social Security Administration to see if the household members already have SSNs, and may use any existing SSNs for verification and matching purposes without further notice to the household.

D.——Verification

See Section 4.505.2 regarding how to verify a SSN.

\*\*\*\*\*

**4.303 RESIDENCY REQUIREMENT**

- A. Applicants shall live in the county or district in which they make application for the Program unless the local office has made arrangements to allow particular households to file an application in a nearby specified county/district office.
- B. Individuals may not participate in more than one household in any one (1) month unless they are a resident of a shelter for battered women and children, nor may a household participate in more than one (1) county or district in any month unless all household members are residents of a shelter for battered women and children.

Households on Indian reservations participating in the Commodity Food Distribution Program for a particular period shall not be allowed to participate in the Food Assistance Program during the same period. Participation shall be limited to participation in the Commodity Program or the Food Assistance Program.

- C. Applicants who maintain a residence in the county or district for any purpose other than a vacation, regardless of the length of time they have resided in the county or district, shall be considered eligible for the Program, provided other eligibility requirements are met.
- D. Applicants who reside in a county, without residing in a permanent dwelling nor having a fixed mailing address, shall be considered eligible for the Program, provided other eligibility requirements are met. Migrant campsites satisfy the residency requirement, as do shelters for the homeless. Homeless persons as defined in Section 4.304.41 satisfy the residency requirement as long as dual participation in any month of eligibility is not allowed.
- E. In no instance shall there be a durational residency requirement imposed upon the applicant. Intent to permanently remain in the state shall not be a condition of eligibility.
- F. The application contains spaces for both a physical address and a mailing address. If the household has a mailing address that is different than the household's physical address, the certification worker should ensure that both addresses are given. For households residing in a permanent dwelling, a mailing address only, such as post office box or rural route, will not be



sufficient, as it does not indicate the household resides in the county. In such cases, information should be given that can identify the location of the home. An exception to the requirement for physical location may be granted for residents of shelters for battered women and children and those that lack a permanent dwelling.

- E. ~~See Section 4.803.3 for the disqualification penalties that can be imposed upon an individual for misrepresenting his/her identity and/or residency to receive duplicate benefits.~~

\*\*\*\*\*

#### **4.304.2 Shared Living Arrangements**

- A.——In instances when two (2) households request Food Assistance for the same child, the child shall be considered a member of the household that provides the majority of the child's monthly meals.

If only one (1) household is applying for or requesting Food Assistance benefits for a child, then determining a majority of meals shall not be a factor when determining household composition.

- B.——If two (2) households request assistance for the same child and both households provide an equal number of meals to the child, and the households cannot agree on who should receive Food Assistance benefits for the child for the duration of the certification period, then the household that applies for Food Assistance benefits for the child first shall be able to receive benefits for the child.
- C.——In instances when an applicant or ongoing household requests benefits for a child who is already receiving Food Assistance in another household, the household who provides the child with the majority of meals shall be eligible to receive benefits for the child (~~see Section 4.505.4~~).
- D.——~~Changes in household composition shall be handled in accordance with Section 4.604.~~

\*\*\*\*\*

#### **4.304.3 Non-Household Members**

The following individuals residing with a household shall not be considered household members in determining the household's eligibility or allotment, unless otherwise stated:

A. Roomers

Roomers are individuals to whom a household furnishes lodging, but not meals, for compensation. Roomers, who are otherwise eligible, may participate in the program as separate households.

B. Ineligible Student

Any person who is: 1) at least eighteen (18) and not yet fifty (50) years of age, 2) physically and mentally fit, and 3) enrolled at least half time in an institution of higher education, unless he/she meets the eligibility criteria specified in Section 4.306.1.

C. Live-in Attendant

Individuals who reside with a household to provide medical, housekeeping, child care, or other similar personal services. Persons who are otherwise eligible may participate in the Program as separate households.

D. Boarders

Individuals residing with others and paying reasonable compensation to others for lodging and meals. Boarders are not eligible to participate in the Food Assistance Program as a separate household.

1. Boarders shall not be considered members of a participant or applicant household, unless the household requests that they be considered as members. If the boarder is not considered a household member, the income and resources of the boarder shall not be considered available to the household. However, the amount of payment that a boarder gives to a household for lodging and meals shall be treated as self-employment income to the household. If the household requests that the boarder be considered a household member, the boarder's income and resources shall be considered available to the household.
2. Individuals for whom foster care payments are intended are to be treated as boarders. If the household requests to include those individuals as household members, the foster care payments received by the household will be included as unearned income.

~~If foster care payments are received and the individuals are treated as boarders, then the foster care payments shall be handled as self-employment income (see Section 4.403.2). The foster care payments will be disregarded as an expense of doing business.~~

3. Boarder status shall not be granted to the following persons:
  - a. Children under eighteen (18) years of age under the parental control of a member of the household. The parental control provision does not apply to foster care children under eighteen (18) years of age.
  - b. Children twenty-one (21) years of age and younger living with their natural, adoptive, or stepparent.
  - c. The spouse of a member of the household.
  - d. A person paying less than a reasonable monthly payment for meals. Such a person will be considered a member of the household which provides the meals and lodging. When the boarder's payments for room are distinguishable from his/her payments for meals, only the amount paid for meals will be considered in determining if reasonable compensation is being paid for meals. Persons who only work in exchange for meals or make payments to a third party on the household's behalf in exchange for meals would not be classified as boarders.

A reasonable monthly payment shall be either of the following:

- 1) Boarders, whose board arrangement is for more than two (2) meals per day, shall pay an amount which equals or exceeds the maximum Food Assistance allotment for the number of persons in the boarder household.

- 2) Boarders, whose board arrangement is for two (2) meals or fewer per day, shall pay an amount which equals or exceeds two-thirds of the maximum allotment for the number of persons in the boarder household.

\*\*\*\*\*

#### 4.304.41 Exemptions from the Boarding House and Institution Prohibitions

- A.——An individual who is a resident of federally subsidized housing for elderly persons under Section 202 of the Housing Act of 1959 or Section 236 of the National Housing Act. A person who is elderly is defined as a member of a household who is sixty (60) years of age or older.
- B.——Narcotic addicts or alcoholics and their children, who, for purposes of regular participation in a drug or alcoholic treatment and rehabilitation program, reside at a facility or treatment center (see Section 4.309.3).
- C.——Residents of a public or private nonprofit group living arrangement facility, who are blind or disabled recipients who meet the definition of blind or disabled under the Food and Nutrition Act of 2008, as described below. The details for certification of a group living situation are contained in Section 4.309.4.
  - 1.——A person who is disabled is defined as a member of a household who:
    - a.——~~Receives Supplemental Security Income benefits under Title XVI of the Social Security Act, or the Colorado Supplement, or Aid to the Needy and Disabled—Supplemental Security Income—Colorado Supplement (AND-SSI-CS), or Aid to the Blind—Supplemental Security Income—Colorado Supplement (AB-SSI-CS); or disability or blindness payments under Title I, II, X, or IXV of the Social Security Act;~~
    - b.——~~Is a veteran with a service-connected disability rated or paid as a total disability under Title 38 of the United States Code or is a veteran receiving a pension for a non-service-connected disability;~~
    - c.——~~Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the Code;~~
    - d.——~~Is a surviving spouse of a veteran and considered in need of aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under Title 38 of the United States Code;~~
    - e.——~~Is a surviving spouse or child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under Title 38 of the United States Code and has a disability considered permanent under Section 221(i) of the Social Security Act. “Entitled”, as used in this definition, refers to those veterans’ surviving spouses and children who are receiving the compensation or benefits or have been approved for such benefits but are not receiving them.~~
    - f.——~~Is a person who has a disability considered permanent under Section 221(i) of the Social Security Act (SSA) and receives a federal, state, or local public disability retirement pension;~~
    - g.——~~Is a person who receives an annuity for disability from the Railroad Retirement Board who is considered disabled by the SSA or who qualifies for Medicare as determined by the Railroad Retirement Board;~~

- h. ~~Is a recipient of interim assistance benefits pending the receipt of the Supplemental Security Income (SSI), disability-related medical assistance under the Title XIX of the Social Security Act, or disability-based state assistance benefits provided that the eligibility to receive these benefits is based on disability or blindness criteria which are at least as stringent as those used under Title XVI of the Social Security Act.~~

2. ~~Verification~~

- a. ~~For Item 1, a, above, the household shall provide proof that the person with a disability is receiving benefits under Title I, II, X, XIV, or XVI of the Social Security Act.~~
- b. ~~For Item 1, b, above, the household shall provide a statement from the VA that the disability is rated or paid as total.~~
- c. ~~For Items 1, c and d, above, proof of receipt of VA Disability Benefits is sufficient verification.~~
- d. ~~For Items 1, e and f, above, unless the disability is obvious to the agency (based upon SSA's current list of disabilities considered permanent), a statement from a physician or a licensed certified psychologist is required stating such a basis.~~
- e. ~~For Item 1, g, above, the household shall provide proof that the individual receives a disability annuity from the Railroad Retirement Board and has been determined to qualify for Medicare.~~
- f. ~~For Item 1, h, above, the household shall provide proof that the individual receives interim assistance benefits pending the receipt of SSI or disability-related medical assistance under Title XIX of the Social Security Act or disability-based state general assistance benefits (AND or AB). The local office shall verify that the eligibility to receive the state general assistance, interim assistance, or medical assistance benefits is based on disability or blindness criteria which are at least as stringent as those used under Title XVI of the Social Security Act, as amended, (codified at 42 USC 1381-1383f). The Act(s) do not include any later amendments to or editions of the incorporated material. Copies of federal laws are available for inspection during normal working hours by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, CO 80203; or a state publications depository.~~

D. ~~Women or women and their children who are temporarily residing in a public or private nonprofit shelter for battered women and children. (see Section 4.309.2-.)~~

E. ~~Residents of public or private nonprofit shelters for homeless persons.~~

A homeless individual is an individual who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is:

1. ~~A supervised shelter which provides temporary accommodations; or,~~
2. ~~A temporary residence for individuals intended to be institutionalized; or,~~
3. ~~A temporary accommodation in the residence of another individual; the household will only be considered homeless if the accommodation is no more than ninety (90) days; or,~~

4. ~~\_\_\_\_\_ A place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings.~~

\*\*\*\*\*

\*\*\*\*\*

#### **4.305.2 Households Containing a Sponsored Non-Citizen Member**

- A. \_\_\_\_\_ The provisions of this section apply only to those non-citizens for whom a sponsor has executed an affidavit of support (INS Form I-864 or I-864A) on behalf of the non-citizen pursuant to Section 213A of the Immigration and Nationality Act (INA) on or after December 19, 1997. Prior to this time, affidavits of supports, known as I-134s, were not legally binding; therefore, the sponsor could not be legally compelled to support the non-citizen based on an affidavit of support signed prior to December 19, 1997.

B. \_\_\_\_\_ Definition of a Sponsor

1. \_\_\_\_\_ Sponsored non-citizens are those non-citizens lawfully admitted for permanent residence into the United States who have been sponsored by an individual for entry into the country.
2. \_\_\_\_\_ A sponsor is a person who executed an affidavit(s) of support (INS Form I-864 or I-864A) or another form deemed legally binding by the Department of Homeland Security on behalf of a non-citizen as a condition of the non-citizen's entry or admission to the United States as a permanent resident. Date of entry or admission means the date established by the Immigration and Naturalization Service (INS) as the date the sponsored non-citizen was admitted for permanent residence.

- C. \_\_\_\_\_ Only when a sponsored non-citizen is an eligible non-citizen will the local office consider the income and resources of the sponsor and sponsor's spouse available to the household. For purposes of determining eligibility and benefit level of a household of which an eligible sponsored non-citizen is a member, the local office shall deem the income and resources of the sponsor and the sponsor's spouse, if he or she executed INS Form I-864 or I-864A, as the unearned income and resources of the sponsored non-citizen.

D. \_\_\_\_\_ Calculating Sponsor Income

1. \_\_\_\_\_ The total gross income and resources of a sponsor and sponsor's spouse shall be considered as unearned income and resources of a sponsored non-citizen for a period until the person's citizenship is obtained; or until the non-citizen has worked or can receive credit for forty (40) work quarters under Title II of the Social Security Act; or the sponsor dies.

The spouse's income and resources shall be counted even if the sponsor and spouse were married after the signing of the agreement.

2. \_\_\_\_\_ The monthly income of the sponsor and the sponsor's spouse to be considered toward the non-citizen shall be the total monthly earned and unearned income of the sponsor and spouse at the time the household containing the sponsored non-citizen member applies for or is recertified for Program participation and shall be calculated as follows:

a. \_\_\_\_\_ Reduced by an amount equal to twenty percent (20%) of the earned income of the sponsor and the sponsor's spouse; and,

b. \_\_\_\_\_ An amount equal to the Food Assistance Program's monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's

spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for federal income tax purposes; and,

- e. — If a sponsored non-citizen can demonstrate to the local office's satisfaction that his or her sponsor is the sponsor of other non-citizens, the local office shall divide the deemed income and resources of the sponsor and the sponsor's spouse by the number of such sponsored non-citizens.
- 3. — If the sponsored non-citizen has already reported gross income information on his/her sponsor in compliance with the sponsored non-citizen rules of another state assistance program, and the local office is aware of the amounts that income amount shall be used for Food Assistance deeming purposes. However, the local office shall limit allowable reductions to the total gross income of the sponsor and the sponsor's spouse prior to attributing an income amount to the non-citizen. The only reduction will be twenty percent (20%) earned income amount for that portion of the income determined as earned income of the sponsor and the sponsor's spouse and an amount equal to the Food Assistance Program's monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for federal income tax purposes.
- 4. — Actual money paid to the non-citizen by the sponsor or the sponsor's spouse shall not be considered as income to the non-citizen unless the amount paid exceeds the amount already considered as income as above. Only the portion that actually exceeds the income already considered shall be added to that income.
- 5. — If the non-citizen changes sponsors during the certification period, a change shall be processed to consider the new sponsor's income and resources toward the non-citizen as soon as possible after the information is verified. The previous sponsor's income and resources shall be used until such determination; however, should any present sponsor become deceased, that sponsor's income and resources shall not be attributed to the non-citizen.
- 6. — Total resources of the sponsor and the sponsor's spouse shall be considered as resources to the non-citizen reduced by one thousand five hundred dollars (\$1,500). ~~See Section 4.206 "Categories of Eligibility" regarding which households are subject to a resource limit.~~
- E. — The counting of a sponsor's income and resource provisions do not apply to a non-citizen who is:
  - 1. — A member of his or her sponsor's Food Assistance household;
  - 2. — Sponsored by an organization or group as opposed to an individual;
  - 3. — Not required to have a sponsor under the Immigration and Nationality Act (INA), such as a refugee, a parolee, an asylee, or a Cuban or Haitian entrant;
  - 4. — A non-citizen who is considered as an "indigent" non-citizen;

An indigent non-citizen is a non-citizen who has been determined to be unable to obtain food and shelter which totals to an amount exceeding one hundred thirty percent (130%) of the federal poverty level. A non-citizen who is receiving in-kind benefits that exceed the gross income level for the household size shall not be considered indigent. The non-citizen's own income plus any cash, food, housing, or other assistance provided by other individual's, including the sponsor will be counted in making this determination.

For purposes of this provision, the sum of the eligible sponsored non-citizen's household's own income, the cash contributions of the sponsor and others, and the

value of any in-kind assistance from the sponsor and others, shall not exceed one hundred thirty percent (130%) of the poverty income guideline for the household's size. The local office shall determine the amount of income and other assistance provided in the month of application. If the non-citizen is below one hundred thirty percent (130%) of the federal poverty level, the only amount that the local office shall consider to such a non-citizen will be the amount actually provided by the sponsor for a period beginning on the date of such determination and ending twelve (12) months after such date. Each determination is renewable for additional twelve (12) month periods. The local office shall notify the U.S. attorney general of each such determination, including the names of the sponsor and the sponsored non-citizen involved.

5. — A child of a battered parent is exempt from the provision of sponsorship. A battered non-citizen spouse, non-citizen parent of a battered child, or child of a battered non-citizen will not have sponsor's income and resources counted during a twelve (12) month period after the local office determines that the battering is substantially connected to the need for benefits, and the battered individual does not live with the batterer. After twelve (12) months, the local office shall not deem the batterer's income and resources if the battery is recognized by a court or the INS and has a substantial connection to the need for benefits, and the non-citizen does not live with the batterer;
6. — Had been sponsored but has since obtained citizenship;
7. — A person whose sponsor has died; or,
8. — Who has worked or can receive credit for a total of forty (40) work quarters under Title II of the Social Security Act.

F. — Verification Requirements

The local office shall verify the following information at the time of initial application and recertification:

1. — The income and resources of the non-citizen's sponsor and the sponsor's spouse (if the spouse is living with the sponsor) at the time of the non-citizen's application for Food Assistance.
2. — The names (and alien registration numbers) of other non-citizens for whom the sponsor has signed an affidavit of support or similar agreement.
3. — The number of dependents who are eligible to be claimed for federal income tax purposes by the sponsor and the sponsor's spouse.
4. — The name, address, and phone number of the non-citizen's sponsor.
5. — ~~Any other information that is determined to be questionable and which affects household eligibility and benefit level shall be verified in accordance with Section 4.500.~~

G. — Awaiting Verification

1. — Until the non-citizen provides information or verification necessary to determine eligibility, the sponsored non-citizen shall be ineligible. When such verification is provided, the local office shall act on the information as a reported change in household circumstances. The eligibility of any remaining household members shall be determined. The income and resources of the ineligible non-citizen (excluding the attributed income and resources of the non-citizen's sponsor and sponsor's spouse) shall be treated in the same manner as a disqualified member as set forth in Section 4.411.1 and considered available in determining the eligibility and benefit level of the remaining household members.



2. If the sponsored non-citizen refuses to cooperate in providing and/or verifying needed information, other adult members of the non-citizen's household shall be responsible for providing and/or verifying the information. If the information or verification is subsequently received, the local office shall act on the information as a reported change. If the same sponsor is responsible for the entire household, the entire household is ineligible until such time as the needed information is provided and/or verified. The local office shall assist the non-citizen in obtaining verification provided the household is cooperating with the local office.

#### H. Sponsored Non-Citizen's Responsibility

1. During the period the sponsored non-citizen is subject to deeming, the eligible sponsored non-citizen shall be responsible for obtaining the cooperation of his/her sponsor, for providing the local office, at the time of application and/or recertification, the information and/or documentation necessary to calculate income and resources attributable to the non-citizen's household. The eligible sponsored non-citizen shall be responsible for providing the names (or other identifying factors) of other non-citizens for whom the non-citizen's sponsor has signed an agreement to support. The local office shall attribute the entire amount of income and resources to the applicant eligible sponsored non-citizen until he or she provides the information required.
2. The local office will determine how many of such non-citizens are Food Assistance Program applicants or participants and initiate appropriate proration. The eligible sponsored non-citizen shall also be responsible for reporting the required information about the sponsor and sponsor's spouse should the non-citizen obtain a different sponsor during the certification period. The eligible sponsored non-citizen shall report changes in income should the sponsor or sponsor's spouse change or lose employment or become deceased during the certification period. The local office shall act on the information as a reported change in household circumstances as set forth in Section 4.604.

\*\*\*\*\*

#### 4.306 STUDENT ELIGIBILITY

- A. Any person who is age eighteen (18) through forty-nine (49), physically and mentally fit, and enrolled at least half time in an institution of higher education shall not be eligible to participate in the Food Assistance Program unless the person meets at least one of the criteria listed BELOW in ~~Section 4.306.1.~~

~~Institutions of higher education are defined as those institutions that normally require a high school diploma or equivalency certificate for a student to enroll. Post-high school education includes, but is not limited to, colleges, universities, and post-high school level technical and vocational schools.~~

- B. Student eligibility criteria does not apply to the following individuals:

1. Persons age seventeen (17) or under;
2. Persons age fifty (50) or over;
3. Persons who are physically or mentally unfit for employment (including students participating through or in a vocational rehabilitation program);

If mental or physical unfitness for employment is claimed and the unfitness is not evident to the local office, verification may be required. Appropriate verification may consist of receipt of temporary or permanent disability benefits or a statement from a physician or licensed psychologist.

4. Persons enrolled less than half time;

5. Persons enrolled full time in schools and training programs that are not institutions of higher education;
6. Persons attending high school;
7. Persons participating in an on-the-job training program.

On-the-job training is defined as training in an employment environment and does not include an internship, field work, or practical experience associated with a course of higher education.

- C. The enrollment status of a student shall begin on the first day of the school term of the institution of higher education. Once a student enrolls in an institution of higher education, such enrollment shall be deemed continuous through normal periods of class attendance, vacation, and recess unless the student graduates, is suspended or expelled, drops out or does not intend to register for the next normal school term (excluding summer session). It is possible for a student to enroll prior to the beginning of the school term. However, for eligibility purposes, enrollment starts when the student starts classes.

\*\*\*\*\*

#### 4.307 STRIKER ELIGIBILITY

- A.——Households containing a striking member shall not be eligible for Food Assistance unless the household was eligible for the Program the day before the strike and are otherwise eligible at time of the strike. Households where the striking member was exempt from work registration the day before the strike shall not be subject to these provisions and shall be certified if otherwise eligible, unless the exemption was based on the employment.
- B.——Pre-strike eligibility is determined by considering the day prior to the strike as the day of application and assuming the strike was not occurring. Eligibility at the time of application shall be determined by comparing the striking member's income as of the day before the strike to the striking member's current income and adding the higher of the two (2) to the current income of the non-striking household members during the month of application. The higher income will be used in determining benefits.
- C.——For Food Assistance purposes, a striker is anyone involved in a strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees. Individuals will be deemed participants in a strike whether or not they personally voted for the strike.
- D.——~~Households containing a striking member shall not be eligible for Food Assistance unless the household was eligible for the Program the day prior to the strike, and is otherwise eligible at the time of application.~~

\*\*\*\*\*

#### 4.308 VOLUNTARY QUIT

- A. No individual who quit his or her most recent job without good cause or reduces work effort and, after the reduction, is working less than thirty (30) hours each week, without good cause, or earning less than the federal minimum wage multiplied by thirty (30) hours, shall be eligible for participation in the Food Assistance Program. At the time of application, the eligibility technician shall explain to the applicant the potential penalties if a household member quits his or her job or reduced hours or wages without good cause or if another member joins the household if that individual has voluntarily quit employment.
- B. When a household files an application, or when a participating household reports the loss of a

source of income or reduction in hours, the local office shall determine whether any household member voluntarily quit or reduced his or her hours or income. Benefits shall not be delayed ~~beyond the processing standards as specified in Section 4.205.2~~ pending the outcome of this determination. A sanction shall be imposed if the quit or reduction in hours or wages occurred within sixty (60) calendar days prior to the date of application or anytime thereafter, and the quit or reduction was without good cause. An employee of the federal government, or of a state or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike, shall be considered to have voluntarily quit his or her job without good cause. If an individual quits a job, secures new employment at comparable

wages or hours, and, through no fault of his or her own loses the new job, the earlier quit shall not be a basis for disqualification.

- C. In the case of an applicant household, the local office shall determine whether any currently unemployed household member who is required to register for work or was exempt from registration for being employed has voluntarily quit his or her most recent job within the last sixty

(60) days. If the local office learns that a household has lost a source of income after the date of application but before the household is certified, the local office shall determine whether a voluntary quit occurred.

The nonexempt individual who quit or reduced work hours will be ineligible to participate for the sanction period if the household is determined eligible for the Food Assistance Program. The individual will be required to comply with Employment First following the sanction period unless the individual becomes exempt from work requirements.

- D. In the case of the participating household, the local office shall determine whether any household member voluntarily quit his or her job while participating in the Program. If a household is already participating when a quit that occurred prior to certification is discovered, the household shall be regarded as a participating household.
- E. Upon a determination that the individual voluntarily quit employment, reduced work hours below thirty (30) hours, or reduced wages to the point at which the person is earning less than the federal minimum wage multiplied by thirty (30) hours, the local office shall determine if the voluntary quit was with good cause.

If an individual voluntarily quits or reduces work hours/wages without good cause, the individual will be disqualified in the same manner as individuals failing to comply with work registration or Employment First requirements (~~See Section 4.310.6~~).

- F. If the local office determines that the individual voluntarily quit his or her job or reduced his or her work hours without good cause while participating in the Food Assistance Program, the local office shall provide the household with a Notice of Adverse Action within ten (10) calendar days after the determination of a voluntary quit is made. The notice shall contain the particular act of noncompliance, the proposed period of disqualification, the action to be taken at the end of the disqualification and shall specify that the individual may be included in the household after the disqualification period if the individual meets other work requirements.
- G. Individuals have the right to a fair hearing to appeal a disqualification due to a determination that the individual quit his or her job without good cause or reduced his or her work hours without good cause. If a participating household requests a fair hearing and the local office determination is upheld, the disqualification period shall begin the first of the month after the hearing decision is rendered.

\*\*\*\*\*

#### 4.308.1 Good Cause for Quitting or Reducing Work Hours

Upon a determination that the individual voluntarily quit employment, the local office shall determine if there was good cause which shall include, but not be limited to, any of the following:

- A. Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin, or political beliefs;
- B. Work demands or conditions that render continued employment unreasonable such as working without being paid on schedule;
- C. Acceptance by the individual of employment; or enrollment of at least half-time in any recognized school, training program, or institution of higher education, that requires the individual to leave employment;

- D. Acceptance by any other household member of employment or enrollment at least half-time in any recognized school, training program, or institution of higher education in another county or political sub-division which requires the household to move and thereby requires the individual to leave employment;
- E. Resignations by persons under the age of sixty (60) that are recognized by the employer as retirement;
- F. Resignation from employment that does not meet suitable criteria specified in Section 4.310.51;
- G. Because of circumstances beyond the control of the individual, accepted full time employment subsequently either does not materialize or results in employment of less than thirty (30) hours a week or weekly earnings of less than the federal minimum wage multiplied by thirty (30) hours;
- H. Leaving a job in connection with patterns of employment in which workers frequently move from one employer to another, such as migrant farm labor or construction work, even though employment at the new site has not actually begun;
- I. Illness of the head of household;
- J. Illness of another household member requiring the presence of the head of household;
- K. A household emergency;
- L. The unavailability of transportation; or,
- M. Employer demands a reduction in participant's work effort or salary through no fault of the employee.
- N. LACK OF ADEQUATE CHILD CARE FOR CHILDREN WHO HAVE REACHED AGE 6 BUT ARE UNDER AGE 12.

\*\*\*\*\*

#### 4.309.21 Residents of Shelters for Battered Women and Children

Women or women with their children who are temporarily residing in a shelter for battered women and children (which serves over fifty percent (50%) of their meals) shall be considered exempt from the prohibition against residents of institutions.

- A. — They shall be allowed to apply and be considered for eligibility as individual (parent/child) units, rather than considered as part of a household consisting of all shelter residents.
- ~~B. — Since leaving a shelter may pose a hazard to many of these women and children, the local office shall make provisions to interview these persons over the telephone, if the client feels it is necessary.~~
- B. C. In many instances battered women and their children who were previously certified in the household of an abuser may not have access to their allotment. Therefore, these individuals shall be allowed to participate in one (1) additional project area and/or household so long as one of the two households with which they are participating contains the individual who abused them. These persons may receive an additional allotment only once in a month.
- C. D. The local office should act promptly to reflect the changes in household composition and shall act on the change to reduce or terminate benefits to the applicant's former household as appropriate.

- D. E. Shelter residents who apply as separate households shall be certified solely on the basis of their income and resources and the expenses for which they are responsible. They shall be certified without regard to the income, resources, and/or expenses of their former household. Jointly held resources shall be considered inaccessible to the household if access to such resources is dependent upon the agreement of a joint owner who still resides in the former household.

\*\*\*\*\*

#### 4.309.31 Responsibilities of the Center

Drug or alcohol treatment and rehabilitation centers will be responsible for the following:

- A.——The drug or alcohol treatment center employee designated to serve as an authorized representative shall be responsible for obtaining their own Electronic Benefit Transfer (EBT) card and Personal Identification Number (PIN) with which to access benefits from the resident's account while the resident remains a resident of the facility.

The resident's EBT card shall be stored in a secure area while the resident receives treatment at the facility. The drug or alcohol treatment center shall not have access to, or knowledge of, the PIN for the resident's own EBT card.

- B.——Each treatment and rehabilitation center shall provide the certification office with a certified list of currently participating residents and their children residing with them in the center. The certification office shall require the list on a monthly or semimonthly basis. In addition, the certification office shall conduct periodic, random, onsite visits to the center to ensure the accuracy of the listings and that the local office's records are consistent and up-to-date. The frequency of periodic visits is left to the discretion of the local office but once each year is recommended.

- ~~C.——The treatment center shall notify the certification office of changes in the household's circumstances in accordance with reporting requirements outlined in Section 4.603.~~

- C. D. The treatment center shall also report when the resident leaves the treatment center. The treatment center shall return to the issuing office any benefits received after the household has left the center.

The treatment center shall provide the residents with their EBT card when the household leaves the treatment and rehabilitation program. Once the household leaves the treatment center the center is no longer allowed to act as that household's authorized representative. The departing resident shall receive his/her full allotment if already issued and if no benefits have been spent on his/her behalf. If benefits have been issued and any portion have been spent on his/her behalf and the resident leaves, the treatment center shall return a prorated amount of the household's monthly allotment back to the household's EBT account based on the number of days in the month that the household resided at the center. Under no circumstances shall the center pull benefits from an EBT card after the resident has left the facility. In addition, the drug or alcohol treatment center shall return the authorized representative EBT card, and the resident's card if it was left behind, to the issuing office within five (5) calendar days of the resident's departure.

The center shall provide the household with a change report form as soon as it has knowledge the household plans to leave the facility and advise the household to return the form to the local Food Assistance office within ten (10) days of any change the household is required to report.

- D. E. The organization or institution shall be responsible for any misrepresentation or fraud, which it knowingly commits in the certification of center residents. As an authorized representative, the organization or institution shall be knowledgeable about household circumstances and should carefully review those circumstances with residents prior to applying on their behalf.

- E. F. The organization or institution may be penalized or disqualified if it is determined administratively or judicially that benefits were misappropriated or used for purchases that did not contribute to a certified household's meals. The certification office shall promptly notify the state office when it has reason to believe that an organization or institution is misusing Food Assistance benefits in

its possession. However, no action shall be taken against the organization or institution prior to an FNS investigation. The certification office shall establish a claim for over-issuance of Food Assistance benefits held on behalf of resident clients if any over-issuances are discovered as a result of an FNS investigation or hearing. If FNS disqualifies an organization or institution as an authorized treatment center, the certification office shall suspend its authorized representative status for the same period.

\*\*\*\*\*

#### 4.309.4 Residents of Group Living Arrangements

- A. Group living arrangements are residential settings that are considered alternatives to institutional living. Institutional settings are not included in this provision. To be eligible as residents of a group living arrangement, the person shall be blind or disabled as defined in Section 4.304.41. In addition, the local office shall verify that the group living arrangement is a public or private nonprofit facility with no more than sixteen (16) residents, and is certified as a group living arrangement by the Colorado Department of Public Health and Environment and the Colorado Department of Human Services under Section 1616(e) of the Social Security Act. FNS may also certify under standards determined by the USDA that are comparable to standards implemented the state under 1616(e) of the Social Security Act (codified at 42 USC). The federal laws do not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection during normal working hours by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository. Individuals residing in a for profit facility are considered residents of an institution per Section 4.304.4(E).

- B. Residents of group living arrangements may elect to participate in the Food Assistance Program. Residents shall either apply and be certified through an authorized representative, who is employed and designated by the group living arrangement, or apply and be certified on their own behalf or through an authorized representative of their own choice. The group living arrangement shall determine if any resident may apply for Food Assistance on his/her own behalf; the determination shall be based on the resident's physical and mental capability to handle his/her own affairs.

1. If residents apply through the use of the facility's authorized representative, their eligibility shall be determined as one-person households. The group living arrangement may either receive and spend the allotment on food prepared by and/or served to the eligible resident, or allow the eligible resident to use all or any portion of the allotment on his/her own behalf.

The group living facility employee designated to serve as an authorized representative shall be responsible for obtaining their own Electronic Benefit Transfer (EBT) card and Personal Identification Number (PIN) with which to access benefits from the resident's account while the resident remains a resident of the facility.

The resident's EBT card shall be stored in a secure area while the resident resides in the group living facility. The group living facility shall not have access to, or knowledge of, the PIN for the resident's own EBT card.

2. If the residents apply on their own behalf, the applications shall be accepted for any individual applying as one-person household or for any grouping of residents applying as a household. If residents are certified on their own behalf, the allotment may be returned to the facility to be used to purchase food for meals served either communally or individually to eligible residents, used by eligible residents to purchase and prepare food for their own consumption, and/or to purchase meals prepared and served by the group living arrangement.

- C. Applications for residents of group living arrangements shall be processed using the same standards that apply to all other Food Assistance households including that residents entitled to expedited service shall have benefits available for spending no later than seven (7) calendar days following the date the application was filed. Required verification shall be obtained prior to further benefits being issued.
- D. The local office shall process changes in household circumstances and recertifications by using the same standards that apply to all other Food Assistance households, and resident households shall be afforded the same rights all other Food Assistance households enjoy, including the right to notices of adverse action, fair hearings, and entitlement to lost benefits.

\*\*\*\*\*

#### **4.401 INCOME ELIGIBILITY STANDARDS**

~~Participation in the Program shall be limited to those households whose incomes are determined to be a substantially limiting factor.~~

~~The gross and net income standards of eligibility shall be based on the federal income poverty levels established as provided in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) and as stated in Section 273.9(A) of the Code of Federal Regulations; no later editions or amendments are incorporated. Copies of these regulations are available for inspection during normal working hours by contacting: Colorado Department of Human Services, Director, Food Assistance Programs Division, 1575 Sherman Street, Denver, Colorado 80203; or any state publications depository.~~

~~The gross and net income standards are located in Sections 4.401.1 and 4.401.2.~~

- A. ~~Income eligibility is determined based on the composition of the household. A household shall meet the gross and net income eligibility standards as outlined below:~~
  - 1. ~~Expanded categorically eligible households MUST HAVE GROSS INCOME BELOW TWO HUNDRED PERCENT (200%) OF THE FEDERAL POVERTY LEVEL, as defined in Section 4.206, that do not include a member who is elderly and/or a person with a disability, shall have gross income at or below one hundred thirty percent (130%) of the federal poverty level and have a net income at or below one hundred percent (100%) of the federal poverty level.~~
  - 2. ~~Households that do include a member who is elderly and/or a person with a disability shall have gross income at or below two hundred percent (200%) of the federal poverty level and have net income at or below one hundred percent (100%) of the federal poverty level.~~
  - 2. 3. Basic categorically eligible households shall be deemed as having met gross and net income limits.
  - 3. 4. Households which are not considered expanded or basic categorically eligible and instead subject to standard eligibility rules shall meet income eligibility standards as follows:
    - a. ~~Households that do not include a member who is elderly or a person with a disability shall have gross income at or below one hundred thirty percent (130%) of the federal poverty level and have a net income at or below one hundred percent (100%) of the federal poverty level.~~
    - b. ~~Households that do include a member who is elderly or a person with a disability shall have a net income at or below one hundred percent (100%) of~~



the federal poverty level.

4. 5. For household members who are persons that are elderly and/or have a disability, who are unable to purchase and prepare meals because he or she suffers from a disability considered permanent under the Social Security Act, or a non-disease related, severe, permanent disability, may be considered, together with his or her spouse if the spouse is living in the same home, a separate household from the others with whom the individual lives. The combined income of the others with whom the individual who is elderly and disabled resides (excluding the income of individual who is elderly and disabled and his or her spouse) must not exceed one hundred sixty five percent (165%) of the poverty level. See Sections 4.401.1 and 4.401.2 for the gross and net income levels for 165% of the federal poverty level.

B.——Ineligible students and household members who are ineligible due to citizenship status, intentional program violation, failure to cooperate with work programs, or failure to provide or apply for a Social Security Number, shall be excluded when determining the household size and the appropriate income eligibility maximum and/or level of benefits.

C.——When a certified household has person who is elderly or a person with a disability move into or out of the household, or has a member who becomes sixty (60) years old or begins to receive SSI, disability payments, or veterans benefits, or otherwise becomes classified as a person who is elderly or a person with a disability as defined in Section 4.304.41 a reportable change shall be acted upon within ten (10) calendar days from the day the local office is notified. If the change is not one that the household is required to report, and it is unknown to the local office, the net income eligibility standard will be applied at the time of recertification.

\*\*\*\*\*

#### 4.401.1 Gross Income LEVELS Eligibility Determination

A household evaluated under standard eligibility rules may be eligible if its monthly nonexempt earned and unearned income does not exceed the gross income level. If after deducting any legally obligated child support payments and no other deductions, the household exceeds the gross income level there are no further computations required to consider the household's net income level. Instead, a Notice of Action form is completed to deny the household.

The gross income level for households eligible under standard eligibility rules that do not include a member who is elderly and/or a person with a disability is one hundred thirty percent (130%) of the federal poverty level.

#### Gross Income Levels

Effective October 1, 2017, the gross income level for one hundred thirty percent (130%), two hundred percent (200%), and one hundred sixty-five percent (165%) of the federal poverty level for the corresponding household size is as follows:

Household Size	130% Gross Income Level	200% Gross Income Level	165% Gross Income Level
1	\$1,307	\$2,010	\$1,659
2	\$1,760	\$2,708	\$2,233
3	\$2,213	\$3,304	\$2,808
4	\$2,665	\$4,100	\$3,383
5	\$3,118	\$4,798	\$3,958
6	\$3,571	\$5,494	\$4,532
7	\$4,024	\$6,190	\$5,107
8	\$4,477	\$6,888	\$5,682
Each additional person	+\$453	+\$698	+\$575

\*\*\*\*\*

#### 4.401.2 Net Income LEVELS Eligibility Determination

- A. ~~Households evaluated under standard eligibility rules whose income does not exceed the gross income level as outlined in this section shall have their eligibility for benefits computed allowing the earned income, standard, dependent care, medical, and shelter deductions, as appropriate. The household shall be eligible only if its monthly gross income, less the allowable Food Assistance deductions, is below the maximum net eligibility level for their household size. A standard eligibility household that exceeds the net eligibility level must be denied.~~
- B. ~~A standard eligibility household shall be eligible for Food Assistance benefits if its monthly nonexempt earned and unearned income, less all applicable deductions, including the earned income, standard, medical, dependent care, and unlimited excess shelter deduction, does not exceed the maximum net income level.~~
- C. ~~If a household contains a member who is fifty-nine (59) years old on the date of application, but who will become sixty (60) years of age before the end of the month of application, the local office shall determine the household's eligibility as if the person is sixty (60) years of age.~~
- D. ~~Net Income Levels~~

Effective October 1, 2017, the net income level of one hundred percent (100%) of the federal poverty level for the corresponding household size is as follows:

Household Size	100% Net Income Level
1	\$1,005
2	\$1,354
3	\$1,702
4	\$2,050
5	\$2,399
6	\$2,747
7	\$3,095
8	\$3,444
Each Additional Person	+\$349

\*\*\*\*\*

#### 4.402 HOUSEHOLD INCOME ELIGIBILITY

##### A. Determining Income

1. ~~Income eligibility shall be determined prospectively based on the eligibility worker's anticipation of income at the time of application and when changes are made known to the local office. See Section 4.603.1 for rules concerning anticipating income. Income shall be determined as it is anticipated to be received unless the income is averaged over the certification period in accordance with Section 4.402.2.~~
2. ~~When determining if a household is eligible under gross and/or net income limits, households shall have income converted to a monthly amount by using a conversion as specified below. When a full month's income is anticipated any cents in the gross weekly or biweekly earnings shall be used in converting income to a monthly amount.~~

Monthly income amounts shall be rounded to the nearest dollar amounts. Each monthly income figure that ends in 1 through 49 cents is rounded down, and each monthly income figure that ends in 50 through 99 cents is rounded to the next dollar.

Pay Frequency	Conversion
---------------	------------

Weekly	Multiply Weekly Average by 4.3.
Bi-Weekly (Every Two Weeks)	Multiply Bi-Weekly Average by 2.15.
Semi-Monthly (Twice a Month)	Multiply Semi-Monthly Average by 2.
Every Other Month	Multiply Average by 0.5.
Quarterly	Multiply Average by 0.333333.
Twice a Year	Multiply Average by 0.166666.
Annual	Multiply Average by .083.

- 3.——Household income shall mean all earned and unearned income received or anticipated to be received by household members from whatever source, unless specifically exempted for Food Assistance eligibility and budgeting purposes, per Section 4.405. Income of household members, including the amount of the disqualified person's income attributed to the household, shall be counted as income in the month received or the month it becomes available, unless the income is averaged over the certification period. See Section 4.411 for additional information.

**B.——Variations in Date of Pay**

- 1.——Regular ongoing earned income that is received early or late by a household due to a holiday, a weekend, or pay dates being changed will have income counted based on the regular pay schedule instead of the actual date of pay.
- 2.——Households receiving monthly benefits such as public assistance or social security payments shall not have their monthly income varied merely because mailing cycles resulted in two (2) payments in one month and none in the next month.
- 3.——Households containing a member of the Armed Services of the United States shall not have their monthly income varied merely because the first day of the month falls on a holiday or weekend which resulted in two (2) payments in the month and none in the subsequent month.

**C.——Wage Data**

- 1.——With respect to income or resource information originating with the Internal Revenue Service (IRS) and provided through the income and eligibility verification system (IEVS), as well as wage data obtained through the DOLE or IEVS, the local office must verify such information from another source and must verify applicant/participant access to that income/resource. The local office may not take adverse action on such information until independent verification is obtained, or until the applicant has been found to have failed to cooperate in providing the required verification. The information must also be verified prior to establishing a claim for an over-issuance of benefits.
- 2.——~~Income considered verified upon receipt as outlined in Section 4.504.6 shall be considered verified once it is known to the agency. If the household declares that the information is not accurate, the household shall be given an opportunity to provide verification in order to resolve the discrepancy.~~

\*\*\*\*\*

**4.402.1 Prospective Budgeting**

- A.——Prospective budgeting is the process of computing a household's allotment based on anticipated income and circumstances during the issuance month. All Food Assistance households and all situations require prospective budgeting determinations, including public assistance households under the Title IVA (Temporary Assistance to Needy Families/Colorado Works) Program.
- B.——If the date of receipt or the amount of any anticipated income is uncertain, such as a new job or a PA application, that portion of income shall not be considered. Only the portion of income which can be anticipated with reasonable certainty concerning the amount and month in which monies will be received

shall be counted as income.

~~If a household is certified using anticipated income and the county department subsequently receives documentation verifying a lower amount of income, the change in income shall take effect the month following the month the change is considered reported. If the documentation verifies a higher amount of income, but the income does not cause the household to exceed 130% of the federal poverty level, the change in income shall not cause a decrease in benefits until recertification or periodic report for simplified reporting households, but may cause a decrease in benefits for non-simplified reporting households (see Section 4.604, D).~~

- C. — Income received within the past thirty (30) days may be used as an indication of the income that will be received in the issuance month unless changes in income have occurred or can be anticipated which require proper adjustment. Income used to determine prospective eligibility shall be representative of the household's current circumstances.

If the verified income does not provide an accurate indication of anticipated income, a longer period of past time may be used if it will provide a more accurate indication of anticipated income. If a household's income fluctuates seasonally, it may be appropriate to use the last season rather than the last thirty (30) days, although precaution must be taken to account for possible fluctuations or new circumstances. Except for eligible strikers, no household shall have the amount of any past income automatically attributed to it.

- D. — ~~In cases where the receipt of income for households is reasonably certain but the monthly amount is expected to fluctuate, the household may qualify to have its income averaged to obtain a monthly amount (refer to Section 4.402.2).~~

\*\*\*\*\*

#### 4.403 COUNTABLE EARNED INCOME

The following shall be considered as earned income.

A. — Wages and Salaries

1. — All payments for services as an employee, including garnishments, or money payments legally obligated to the employee and diverted to a third party for the employee's household expenses.

Countable income from employment received by students in institutions of higher education while participating in state work-study programs or a fellowship with a work requirement shall not be considered as earned income.

2. — Earned income includes government payments from Agricultural Stabilization and Conservation Service and wages of AmeriCorps Volunteers in Service to America (VISTA) workers. VISTA payments are excluded if the client was receiving Food Assistance when he or she joined VISTA. If the client was not receiving Food Assistance when he or she joined VISTA, the VISTA payments shall count as earned income. Temporary interruptions in Food Assistance participation shall not alter the exclusion once an initial determination has been made (see Section 4.405.2, A, 3). Temporary interruptions shall be defined as a period of time where a household or individual missed a full month of benefits, excluding instances where the lapse in benefits is due to the local office not taking timely action in accordance with the processing standards outlined in Sections 4.604, 4.205, or 4.209.1.

3. — Wages held at the request of the employee shall be considered income to the household in the month the wages would otherwise have been paid by the employer. Advances on wages shall count as income in the month received, if reasonably anticipated. However, wages held by the employer as a general practice shall not be counted as income unless the household anticipates that it will receive income from such wages previously

withheld by the employer.

When an advance on wages is subsequently repaid from current wages, only the amount of wages received is considered as income. The amount of repayment is disregarded, even if the wage earner was not a Food Assistance participant at the time of the advance.

- 4.——Payment for sick leave, vacation pay, and bonus pay shall be considered as earned income, if the person was still employed while receiving the pay.

#### B.——Training Allowances

- 1.——Payments from vocational and rehabilitation programs recognized by federal, state, or local governments, such as the Job Opportunities and Basic Skills (JOBS) Program, to the extent they are not a reimbursement except for allowances paid under the Workforce Innovation and Opportunity Act (WIOA).
- 2.——Earned income will include earnings to individuals who are participating in the on-the-job training under Section 204(5), Title II, of the Workforce Innovation and Opportunity Act (WIOA). This provision does not apply to household members under nineteen (19) years of age who are under the parental control of another adult member. Earnings include monies paid by the Workforce Innovation and Opportunity Act (WIOA) and monies paid by an employer.

#### C.——Title I Monies

Payments received under Title I (VISTA-University Year of Action) of the Domestic Volunteer Service Act of 1973 shall be considered earned income and subject to the earned income deduction, excluding payments made to those households specified in Section 4.405.2.

#### D.——Income of Strikers

Pre-strike eligibility is determined by considering the day prior to the strike as the day of application and assuming the strike was not occurring. Eligibility at the time of application shall be determined by comparing the striking member's income as of the day before the strike to the striking member's current income and adding the higher of the two to the current income of the non-striking household members during the month of application.

#### E.——Self-Employment

The method of ascertaining the self-employment income to be considered for Food Assistance purposes is often difficult and the guidelines set forth in Sections 4.403.1–4.403.12 are meant to clarify and aid the process.

In determining gross self-employment income, all income received by the self-employment household must be considered. Self-employment income includes:

- 1.——Monies received from rental or lease of self-employment property. Rental property shall be considered a self-employment enterprise. However, the income will be considered as earned income only if the household member (or disqualified person) actively manages the property at least an average of twenty (20) hours per week.
- 2.——Monies received from the sale of capital goods, services, and property connected to the self-employment enterprise. Proceeds of sales from capital goods or equipment are to be treated as income rather than as capital gains.

The term “capital gains”, as used by the Internal Revenue Service (IRS), describes the handling of the profit from the sale of capital assets such as, but not limited to, computers and other electronic devices, office furniture, vehicles, and equipment used in

a self-employment enterprise; or securities, real estate, or other real property held as an investment for a set period of time. For Food Assistance purposes, the total amount received from the sale of capital goods shall be counted as income to the household.

~~3. Income from roomers/boarders (see paragraph G below).~~

F. Owners of Limited Liability Corporations (LLC) and S-Corporations

For Food Assistance Program purposes, owners of LLCs or S-Corporations are considered employees of the corporation and, therefore, cannot be considered self-employed. Because they are not considered self-employed, they are not entitled to the exclusion of allowable costs of producing self-employment income. The income from these types of corporations should be treated as regular earned income, not self-employment income.

Although income received from these corporations is not considered self-employment, the income as reported on the LLC or S-Corporation owner's individual form 1040, shall be counted in determining the household's eligibility and benefit level. Income verified on the 1040 would then be annualized. In the case of a new business, anticipated income shall be used to determine financial eligibility until a tax form is available.

G. Boarder Income

The income of boarders shall include all direct payments to the household for room and meals, including contributions to the household for shelter expenses. Shelter expenses paid directly by boarders to someone outside of the household shall not be counted as income to the household. See Section 4.403.2 regarding calculating income from a boarder.

\*\*\*\*\*

4.403.1 Self-Employment

See Section 4.403, E, for a description of what is considered self-employment income.

- A. Self-employment is defined as a situation where some or all income is received from a self-operated business or enterprise in which the individual retains control over work or services offered, and assumes the necessary business risks and expenses connected with the operation of the business.

Households in which one or more members are engaged in an enterprise for gain either as an independent contractor, franchise holder, or owner-operator must be considered as self-employed, provided that the members are actively engaged in the enterprise on a day-to-day basis. In instances where the members hire or contract for another person or firm to handle the day-to-day activities of such enterprise, the members will have self-employment income but will not be considered as self-employed for purposes of work registration. The self-employed individual need not own one hundred percent (100%) of the company to be considered self-employed.

~~All financial and non-financial eligibility criteria shall apply to self-employment households.~~

- B. The receipt of income from self-employment, which may constitute all or only a portion of the income of the household, does not automatically exempt the members from the work registration requirement. This determination will be made based on the assessment of the eligibility technician and the household's declaration that the self-employment enterprise requires thirty (30) hours of work per week or averages annually thirty (30) hours per week.

\*\*\*\*\*

4.404 COUNTABLE UNEARNED INCOME

Unearned income shall include, but not be limited to, the following:

A. — Assistance Payments

Payment from federal or federally aided public assistance programs, such as Supplemental Security Income (SSI), or Colorado Works/Temporary Assistance to Needy Families (TANF)/Title IV-A, or other assistance programs based on need, including payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves. ~~Payments identified as energy assistance would be excluded in accordance with Section 4.405.2.~~

~~Foster care payments for children or adults will only be included as income when the individual for whom the payment is intended is included as a member of the household (see Section 4.304.3).~~

B. — Retirement and Disability Payments

Payments from annuities; pensions; retirement; veterans or disability benefits; workmen's or unemployment compensation; old age, survivors, or Social Security benefits; and strike benefits.

C. — Support and Alimony Payments

Support and alimony payments made directly to the household from non-household members for normal living expenses.

D. — ~~Educational Monies~~

- ~~1. — Money that is legally obligated or otherwise payable to a household member for education, which includes the amount from scholarships, educational grants, fellowships, deferred payment loans for education, veteran's educational benefits, and any other money received specifically for education expenses shall not be considered as unearned income.~~

D. E. Rental Income

Rental income is total income, less the cost of doing business, from rental property in which a household member (or disqualified individual) is not actively managing the property an average of at least twenty (20) hours a week ~~(see Section 4.403.1).~~

E. F. Income of Non-Citizen Sponsors

Income of non-citizen sponsors shall be considered as unearned income to households containing sponsored non-citizens. ~~Refer to Section 4.305.4 for specific instructions.~~

F. G. Vacation Pay, Sick Pay, and Bonus Pay

If vacation pay, sick pay, or bonus pay is received in installment payments after a person has terminated employment, it is considered unearned income. If the pay is received in a lump sum, it shall be considered as a resource in the month received.

G. H. — Gifts

Gifts from nonprofit organizations that exceed three hundred dollars (\$300) in a quarter or gifts from other sources of any amount, if they can be anticipated, ~~and are not exempt as income under Section 4.405.~~

H. I. Other Gain or Benefits

Dividends, interest, royalties, and all other nonexempt direct money payments from any source that can be construed to be a gain or benefit.

Monies withdrawn from trust funds are income in the month received. Dividends that the household has the option of either receiving as income or reinvesting in the trust must be considered as income in the month they are available to the household.

\*\*\*\*\*

#### 4.405 EXEMPT INCOME

Income from certain sources will be excluded for Food Assistance eligibility purposes under mandate of law. Only the following will not be considered as income:

##### A.——Irregular Income

Any income in the certification period that is received too infrequently or irregularly to be reasonably anticipated, but not in excess of thirty dollars (\$30) in three (3) months.

##### B.——Monies Intended for Non-Household Members

Monies received and used for the care and maintenance of a third-party beneficiary who is not a household member. If the intended beneficiaries of a single payment are both household and non-household members, any identifiable portion of the payment intended and used for the care and maintenance of the non-household member shall be excluded. If the non-household member's portion cannot be readily identified, the payment shall be evenly prorated among the intended beneficiaries and the exclusion applied to the non-household member's pro rata share or the amount actually used for the non-household member's care and maintenance, whichever is less.

##### C.——Earnings of Children

The earned income of children who are under eighteen (18) years of age, who LIVE WITH THEIR NATURAL PARENT, ADOPTIVE PARENT, STEPPARENT, OR ARE UNDER THE PARENTAL CONTROL OF ANOTHER HOUSEHOLD MEMBER OTHER THAN A PARENT ~~are members of the household and~~ are students at least half-time in elementary school, high school, or classes to obtain a General Equivalency Diploma (GED), will be considered exempt income.

The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings or amount of work performed cannot be differentiated from that of other household members, the total earnings shall be prorated equally among the working members and the child's pro rata share excluded.

If the student becomes eighteen (18) years of age in the month of application, the income shall be excluded for the month of application and counted the following month. If the student turns eighteen (18) during the certification period, SIMPLIFIED REPORTING RULES APPLY ~~the income shall be excluded until the month following the month the student becomes eighteen (18) years of age.~~

~~Individuals are considered children for purposes of this provision if they are under eighteen (18) years of age, live with their natural parent, adoptive parent or stepparent, or are under the parental control of another household member other than a parent.~~

##### D.——Recoupments

The following recoupments or repayments from any nonexempt income source shall be exempt as income as follows:

- 1.——Monies withheld from an assistance payment, earned income, or monies received from any nonexempt income source that is voluntarily or involuntarily returned to repay a prior overpayment received from that income source. Only the net income received from these sources shall be considered countable income. However, monies withheld from a federal, state, or local means-tested program (such as Title IV-A, State Old Age



Pension), for purposes of recouping an overpayment which resulted from the household's intentional failure to comply with that program's requirements, shall not be exempted as income, and the gross income received from these sources shall be considered countable income. See Section 4.705 for specific instructions.

2. ~~Child support payments received by Title IV-A participants that the household must transfer to the agency administering Title IV-D of the Social Security Act, in order to maintain their Title IV-A eligibility.~~

~~E. Court Ordered Child Support Payable to Other Parties~~

~~Income which is diverted from a household by a court order to pay a child support payment to or for a non-household member is deducted from income for the household making the payment (see Section 4.407.5).~~

E. F. Non-recurring Lump Sum Payments

Money received in the form of non-recurring lump sum payments, includes, but is not limited to, income tax refunds, rebates, or credits; retroactive lump-sum Social Security, SSI, public assistance, railroad retirement benefits or other payments; or retroactive lump-sum insurance settlements; or any money an inmate receives upon release from prison, including earnings from work performed while incarcerated and accumulated over the length of the incarceration.

State and county diversion payments under Colorado Works shall be excluded as a non-recurring lump sum payment if the payment does not cover more than ninety (90) days of expenses and is not expected to occur again in a twelve (12) month period.

Non-recurring lump sum payments shall be counted as resources in the month received, unless specifically excluded from consideration as a resource by other federal laws. Any funds remaining in subsequent months shall be considered a resource.

~~Beginning December 17, 2010, Federal income tax refunds must be disregarded as a resource for twelve (12) months from the date of receipt by the client. These refunds are also excluded as income in the month received.~~

F. G. Loans

1. ~~All loans from private individuals as well as commercial institutions shall not be considered as income, including educational loans.~~
2. ~~Monies received from a Reverse Annuity Mortgage (RAM) loan program should be treated as a loan and excluded from income. These loans meet the accepted definition of a loan since there is a verifiable agreement to repay with interest.~~

~~See Section 4.405.1 for information about financial assistance.~~

G. H. In-Kind Benefits

An in-kind benefit is any gain or benefit received by the household that is not in the form of money such as meals, clothing, public housing, or produce from a garden.

~~In-kind payments which would normally be excluded as income but are converted in whole or in part to a direct cash payment under the approval of a federally authorized demonstration project (including demonstration projects created by a waiver of the provisions of federal law) shall be excluded from income.~~

H. I. Vendor Payments

~~Vendor payments are money payments that are not payable directly to a household, but are paid to a third party for a household expense.~~ A payment made on behalf of a household shall be considered a vendor payment whenever a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. Vendor payments are excludable as follows:

1. Such payments include subsidies paid to the households and legally obligated to the landlord, rent or mortgage payments made directly to landlords or mortgagees by the Department of Housing and Urban Development (HUD), or payments by a government agency to a child care institution to provide day care for a household member are also excluded as vendor payments.
2. Monies that are legally obligated and otherwise payable to the household, but which are diverted by the provider of the payment to a third party for household expense, shall be counted as income and not excluded as a vendor payment. The distinction is whether the person or organization making the payment on behalf of a household is using funds that otherwise would need to be paid to the household.
3. Any emergency Public Assistance (PA) or General Assistance (GA) payment that is provided to a third party on behalf of the migrant or seasonal farm worker household, while the household is in the job stream, shall be excluded as income and considered as a vendor payment. These payments would normally be considered as income since the payment is legally obligated to the household.
4. Wages earned by a household member that are garnished or diverted by an employer, and paid to a third party for a household's expenses, such as rent, shall be considered as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, this rent payment shall be excluded as a vendor payment. In addition, if the employer provides housing to an employee, the value of the housing shall not be counted as income.
5. Assistance provided to a third party on behalf of a household by the state or local program shall be considered money payable directly to the household if the assistance is provided in lieu of:
  - a. ———A regular benefit payable to the household for living expenses under a program funded under Part A of the Social Security Act; or,
  - b. ———A benefit payable to the household for housing expenses under a state or local general assistance program or other assistance program comparable to general assistance.
6. Assistance payments made to a third party for medical, child care, or emergency/special assistance would be excluded as a vendor payment. Assistance payments provided by a state or local housing authority would also be excluded as income.
7. Energy assistance payments, other than for the Low-Income Energy Assistance Program (LEAP) or a one-time payment under federal or state law for weatherization or to repair/replace an inoperative furnace or other heating or cooling device, that are made under a state or local program shall be counted as income. The exclusion will still apply if a down payment is made and is followed by a final payment upon completion of work. If a state law prohibits the household from receiving a cash payment under state or local general assistance (or comparable program), the assistance would be excluded. This applies to either an energy assistance payment or other type of payment. Energy assistance payments for an expense paid on behalf of the household under a state law shall be considered an out-of-pocket expense incurred and paid by the household.

Energy assistance payments made under Part A of Title IV of the Social Security Act (42

U.S.C. 601, et seq.) is included as income. The Act does not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection during normal working hours by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository.

8. Vendor payments which would normally be excluded as income but are converted in whole or in part to a direct cash payment under the approval of a federally authorized demonstration project (including demonstration projects created by a waiver of the provisions of federal law) shall be excluded from income.
9. Monies from alimony or a court-ordered child support payment which are required by a court order (or other legally binding agreement) to be paid to a third party rather than to the household shall be excluded from income as a vendor payment, even if the household agrees to the arrangement.
10. Payments in excess of the amount specified in a court order (or other legally binding agreement) which are paid to a third party in addition to a court-ordered vendor payment shall also be treated as a vendor payment.

#### I. ~~J.~~ Reimbursements

1. Reimbursement for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household shall not be considered income.

To be excluded, the reimbursement must be provided specifically and used for an identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. Reimbursements for normal household living expenses such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are not exempt.

2. No portion of benefits provided under Title IV-A of the Social Security Act, to the extent such benefit is attributed to an adjustment for work related or child care expenses, except for payment or reimbursement for such expenses made under an education, employment, or training program initiated under such Title after September 18, 1988, shall be considered exempt under this provision.
3. The amount by which a reimbursement exceeds the actual incurred expense shall be counted as income. However, reimbursements shall not be considered to exceed actual expenses unless the provider or the household indicates the amount is excessive.
4. Types of reimbursement for expenses include:
  - c. ~~Reimbursement or flat allowances for job or training related expenses, such as travel, per diem, uniforms, and transportation to and from the job or training site including migrant travel.~~
  - d. ~~Reimbursements for out of pocket expenses of volunteers incurred in the course of their work.~~
  - e. ~~Medical or dependent care reimbursements.~~
  - f. ~~Reimbursements received by households to pay for services provided by Title XX of the Social Security Act.~~
  - g. ~~Reimbursements made to the household for expenses necessary for~~

participation in an education component under the Employment First program.

**J. K- Verification**

Documentation of exempt income may explain a household's ability to maintain itself. Verification of exempt income is necessary only if the income is questionable. For example, when it is questionable that money received is a loan, a simple statement signed by both parties must be obtained which states that the money is a loan and that a repayment is being made or will be made.

If the household receives payments on a regular basis from the same source but claims that payments are loans, it may be required that the provider of the loan sign an affidavit stating that repayments are being made or will be made in accordance with an established repayment schedule.

\*\*\*\*\*

**4.405.1 Loans and Reimbursements to Students**

All education assistance including grants, scholarships, fellowships, work-study, veteran's educational benefits, and ANY OTHER MONEY RECEIVED SPECIFICALLY FOR EDUCATIONAL EXPENSES ARE others that are awarded to a household member will be exempt from consideration as income.

\*\*\*\*\*

**4.406 HOUSEHOLDS DESTITUTE OF INCOME**

Migrant or seasonal farm worker households may be considered destitute of income upon initial certification or recertification, but only for the first month of each certification period.

A. Migrant or seasonal farm worker households may have little or no income at the time of application even though they receive income at some time during the month of application. Such households will be considered destitute and thereby entitled to expedited application processing (see Section 4.205.1), if their only income is from a terminated and/or new source under the following circumstances:

1. The household's only income for the month of application was received from a terminated source prior to the date of application.
  - a. Income is considered to be from a terminated source if it is normally received on a monthly or more frequent basis and is not expected to be received again from the same source during either the remainder of the month of application or the month following (i.e., migrant work ended with one grower).
  - b. Income that is normally received less often than monthly is considered to be from a terminated source if it is not anticipated to be received during the month in which it would normally be received (i.e., quarterly income not received in the normal third month).
2. The household's only income for the month of application is more than twenty-five dollars (\$25) from a new source and it will not be received by the tenth (10<sup>th</sup>) calendar day after the filing date of an application for initial certification, or by the tenth calendar day after the household's normal issuance cycle if the application is for recertification.
  - a. Income is considered to be from a new source if the income of more than twenty- five dollars (\$25) is normally received on a monthly or more frequent basis but has not been received from that source within thirty (30) calendar days prior to the filing date of application.
  - b. Income is considered to be from a new source if the income of more than twenty- five dollars (\$25) is normally received less often than monthly but was not received within the last normal interval between payments.

3. The household's only income is a combination of that received from a terminated source prior to date of application and income of more than twenty-five dollars (\$25) received in the month of application from a new source, which will not be received by the tenth (10<sup>th</sup>) calendar day after the date of initial application, or by the tenth (10<sup>th</sup>) calendar day after the household's normal issuance cycle if application is for recertification.

- B. A migrant farm worker's source of income shall be considered to be the particular grower, and not the crew chief. A migrant who moves from one grower to another shall be considered to have moved from a terminated source to a new source.
- C. There is no limit on the number of times a household can be considered destitute of income provided that before each subsequent expedited certification, the household either has completed the verification requirements that were postponed at the last expedited certification or the household was certified under normal processing standards since the last expedited certification.

\*\*\*\*\*

#### 4.407 DEDUCTIONS AND EXCLUSIONS FROM INCOME

- A. Allowable deductions are subtracted from total monthly gross income to determine the household's monthly net Food Assistance income. The monthly income shall be rounded down to the lower dollar if it ends in one (1) through forty-nine (49) cents and rounded to the next dollar amount if it ends in fifty (50) through ninety-nine (99) cents before deductions are considered.

Allowable expenses will not be deductible if covered by vendor payments such as HUD, or reimbursements, such as insurance. An expense which is covered by an excluded vendor payment that has been converted to a direct cash payment under a federally authorized demonstration project shall not be deductible.

- B. Households may elect to have fluctuating monthly expenses averaged over the certification period. Also, households have the option of having expenses that are billed less often than monthly averaged over the period the expense is intended to cover. Households may elect to have medical expenses averaged as described in Sections 4.407.6 and 4.407.61. Expenses that have been averaged are subject to the reporting requirements contained in Section 4.603.
- C. Actual or averaged expenses that result in deductions for medical, dependent care, and shelter costs shall be anticipated. Households who expect changes cannot have their expenses averaged solely on the basis of the last several bills. Expenses that are billed on a weekly or biweekly basis shall be converted to a monthly figure utilizing the conversion outlined in Section 4.402.
- D. LEGALLY OBLIGATED CHILD SUPPORT IS CONSIDERED AN INCOME EXCLUSION.
- E. The following subsections contain the only deductions allowed from a household's monthly income. The deductions are as follows:

1. ~~Standard deduction~~
2. ~~Earned income deduction~~
3. ~~Excess shelter deduction~~
4. ~~Dependent care deduction~~
5. ~~Legally obligated child support expense deduction~~
5. 6. Excess medical deduction

\*\*\*\*\*

#### **4.407.5 Child Support Expense EXCLUSION ~~Deduction~~**

- A. ~~A household shall receive an EXCLUSION deduction from income for legally binding child support payments made to or for non-household members. The child support EXCLUSION deduction will be made from the household's total countable gross income and prior to any gross income test to determine eligibility. The court-ordered amount and the most recent amounts that have been paid must be verified by the household. Legally obligated child support paid by a household member under the age of eighteen (18) shall be an allowable EXCLUSION deduction, even if the income of the child is considered exempt under Section 4.405, C.~~
- B. ~~If the noncustodial parent makes child support payments to a third party non-household member (e.g., a landlord, utility company, or health insurance organization) in accordance with the support order, the payment shall be included in the child support EXCLUSION deduction.~~
- C. ~~A deduction for amounts paid toward arrearage will be allowed. Alimony payments will not be allowed as an EXCLUSION deduction.~~
- D. ~~Households with a history of three (3) or more months of paying child support shall have the support payments averaged taking into account any anticipated changes in the legal obligation and shall use that average as the household's support EXCLUSION deduction.~~
- E. ~~For households with less than a three (3) month record, the local office shall estimate the anticipated payments and use that estimate as the household's support EXCLUSION deduction.~~
- F. ~~If the household does not report and verify its monthly child support payment or a change in its legal obligation, the child support EXCLUSION deduction shall not be allowed.~~
- G. ~~Households not certified as simplified reporting are responsible to report during the certification period any change in the legal obligation to pay child support, including termination of the obligation when a child reaches an age at which child support is no longer obligated.~~
- H. ~~All households are required to report a change of twenty-five dollars (\$25) or more in the amount that was allowed for the deduction at the time of recertification or periodic report.~~

\*\*\*\*\*

#### **4.407.6 Excess Medical Deduction**

A household shall receive a deduction for total medical expenses in excess of thirty-five dollars (\$35) per month, incurred by any household member(s) who is elderly or disabled as defined in Section 4.304.41. Other household members who are not elderly or disabled, including spouses and dependents, cannot claim costs of their medical treatment and services.

A. The following medical costs, less the cost of reimbursements from another source, are allowable:

1. Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner or other qualified health professional.
2. Hospitalization or outpatient treatment, nursing care, and nursing home care including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the Colorado Department of Public Health and Environment.
3. Prescription drugs when prescribed by a licensed practitioner authorized under state law and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional. Costs of medical supplies, sickroom equipment (including rental), or other prescribed equipment may also be allowable.
4. Health and hospitalization insurance policy premiums, Medicare premiums, and any cost-sharing expenses incurred by medical recipients.
5. Dentures, hearing aids, prosthetics, and eyeglasses prescribed by a physician skilled in eye disease or by an optometrist.
6. Securing and maintaining a service animal, such as a seeing-eye or hearing dog, including cost of food and veterinarian fees. The costs of caring for these animals may be deducted only when the animal has received special training to provide a service to the client.
7. Reasonable transportation and lodging to obtain medical treatment or services. Mileage expenses shall be calculated based on the prevailing Internal Revenue Service (IRS) COMMERCIAL mileage rate used for medical purposes.
8. Wages to an attendant, homemaker, home health aide, child care services, or a housekeeper necessary due to age, infirmity, or illness. In addition, an amount equal to the maximum allotment for one (1) person is allowed if the household furnishes the majority of the attendant's meals. The allotment shall be the one in effect at the time of certification with an appropriate adjustment at the next certification.

If attendant care costs qualify under both medical and dependent care deduction, the costs shall be allowed as a medical expense.

In cases when the household claims a deduction for billed medical expenses and the household is unable to verify whether or not any reimbursement will be received, no medical expense deduction shall be allowed until the household either receives reimbursement for all or part of the expense or is able to verify that reimbursement will not be provided. When such reimbursement is received and/or verified, the non-reimbursed portion of the claimed medical expense is allowed.

B. Non-allowable medical costs include, but are not limited to:

1. Special diet expenses;
2. Premiums for health and accident policies, such as those payable in lump sum settlements for death or dismemberment, or policies for income maintenance such as those that continue mortgage or loan payments while the beneficiary is disabled;
3. Medical expenses that are reimbursable by insurance or other public or private sources;
4. Medical marijuana;
5. Vitamins and supplements unless prescribed by a physician; and
6. Medical expenses carried forward from past billing periods unless one of the following

conditions is met:

- a. The amount is being carried forward pending reimbursement information; or,
- b. The household has made arrangements to make monthly installments on the past due bills. The past due amount must be due to missed payments under a previous repayment agreement with the medical provider, and the payment plan is now being renegotiated with the provider. The negotiation of a payment plan with a collection agency will not be accepted as a renegotiated payment plan; or,
- c. Households that become categorically eligible for food assistance by reason of becoming a pure SSI household shall be entitled to excess medical expenses for the period for which they are authorized to receive SSI or from the date of the food assistance application, whichever is later. Restored benefits shall be issued if appropriate; or,
- d. Medical expenses that occur after the date an application is filed and reported at the subsequent application for redetermination or periodic report shall be considered if the medical expense has not previously been reported and allowed as a medical deduction. If at recertification the household provides previously unreported medical expenses that occurred prior to the last certification period that are past due, the county department shall review the medical expenses under provisions a through c of this subsection.

\*\*\*\*\*

#### 4.408 RESOURCE ELIGIBILITY STANDARDS

- A. The local office shall consider households eligible under either expanded or basic categorical eligibility ~~as outlined in Section 4.206 to have satisfied the resource eligibility criteria of this section. For households eligible under either basic or expanded categorical eligibility, the case shall be documented to show that all household members have been approved for and/or are receiving benefits from the program that confers basic categorical eligibility.~~

- B. Households that do not meet expanded or basic categorical eligibility criteria shall have their nonexempt resources, as anticipated to be available in the issuance month, used to determine household eligibility. ~~See Section 4.409 for what is considered a non-exempt resource.~~

~~For how resources of non-household members and disqualified members are handled, refer to Section 4.411.~~

The resources of a sponsor and spouse considered toward a non-citizen household shall be the sponsor's total resources less two thousand dollars (\$2,000). ~~See Section 4.411.~~

- C. The value of liquid resources, as declared by the household, shall be utilized in the determination of expedited eligibility for all applicant households.

- D. As a result of the Food, Conservation and Energy Act of 2008, adjustments to the Food Assistance resource limit will be subject to change annually according to the Consumer Price Index. There are currently two (2) resource limits:

1. One established for households that do contain a member who is elderly and/or a person with a disability; and,
2. Another established for households that do not contain a member who is elderly and/or a person with a disability.

~~An elderly member is a member who is sixty (60) years of age or older. A disabled member is defined in Section 4.304.41.~~



E. The resource limits are as follows:

Effective October 1, 2017, the resource limit for households that do contain a member who is elderly and/or a person with a disability is three thousand five hundred (\$3,500). The resource limit for households that do not contain a member who is elderly and/or a person with a disability is two thousand two hundred fifty dollars (\$2,250).

\*\*\*\*\*

**4.408.1** Determining the Value of Resources

The value of nonexempt household resources at the time the application is filed must be determined from applicant statements, documents, and/or from collateral contacts when household assessment is uncertain or questionable. ~~See Section 4.409 for what is considered a non-exempt resource.~~

A. Valuation of Liquid Resources

The value of liquid resources is the current redemption rate less encumbrances. ~~For further explanation of liquid and non-liquid resources, see Section 4.409.~~

B. Valuation of Non-Liquid Resources

Except for real property, non-exempt non-liquid resources shall have a fair market value as determined from the best source available (such as, but not limited to, blue book, local dealer, or equivalent verifiable Internet web site) less verified encumbrances. If warranted, the eligibility worker should adjust the market value for poor or unusable condition of the property before assigning a resource value. The eligibility worker shall annotate the case record to show source and computation used to determine resource value.

The value of real property, such as buildings, land, or vacation property, unless exempt as income producing ~~in accordance with Section 4.410, E,~~ may be obtained by using the actual value reported by a county assessor or, if not reported, the current assessed valuation, accomplished in accordance with state law, and dividing the value by the appropriate percentage rate of assessment for real property to derive fair market value and subtracting the amount the household currently owes on the property.

\*\*\*\*\*

**4.408.2** Transfer of Resources

At the time of application, households not eligible under expanded or basic categorical eligibility rules shall be asked to provide information regarding any resources which any household member, ineligible non-citizen, or disqualified person whose resources are being considered available to the household has transferred within the three (3) month period immediately preceding the date of application. Households that have transferred resources knowingly for the purpose of qualifying or attempting to qualify for Food Assistance benefits shall be disqualified from participation in the program for up to one (1) year from the date of discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the three (3) month period prior to application, or if they are transferred knowingly after the household is determined eligible for benefits.

A. Eligibility for the program shall not be affected by the following transfers:

1. Resources that would not otherwise affect eligibility, such as resources consisting of excluded person property such as furniture, or of money that when added to other household resources, totaled less at the time of the transfer than the allowable resource limits.
2. Resources that are sold or traded at, or near, fair market value.
3. Resources that are transferred between members of the same household including

ineligible non-citizens or disqualified individuals whose resources are being considered available to the household.

4. Resources that are transferred for reasons other than qualifying or attempting to qualify for Food Assistance benefits, for example a parent placing funds into an educational trust fund described in Section 4.410, F.

- B. In the event the local office establishes that an applicant household knowingly transferred resources for the purpose of qualifying or attempting to qualify for Food Assistance benefits, the household shall be sent a notice of denial explaining the reason for and length of disqualification. The period of disqualification shall begin in the month of application. If the household is participating at the time of the discovery of the transfer, a notice of adverse action explaining the reason for and the length of disqualification shall be sent. The period of disqualification shall be made effective with the first allotment to be issued after the notice of adverse action has expired, unless the household has requested a fair hearing and continued benefits.

The length of the disqualification period shall be based on the amount by which nonexempt transferred resources, when added to other countable resources, exceed the allowable resource limits.

- C. The following chart shall be used to determine the period of disqualification for transfer of resources.

Amount in Excess of the Resource Limit	Period of Disqualification
\$1 to \$249	1 month
\$250 to \$999	3 months
\$1,000 to \$2,999	6 months
\$3,000 to \$4,999	9 months
\$5,000	12 months

\*\*\*\*\*

#### 4.410 EXEMPT RESOURCES

In determining the resources for a household, the following shall be excluded from consideration.

- A. Vehicles

All of a household's licensed and unlicensed automobiles, motorcycles and vehicles, including recreational vehicles and seasonal vehicles, shall be totally exempt as a resource.

- B. Home and Property

The home and surrounding property, which is not separate from the home by intervening property owned by others, will be an exempt resource. Public rights of way, such as roads that run through the surrounding property and separate it from the home, will not affect the exemption of the property. The home and surrounding property shall remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness or un-inhabitability caused by casualty or natural disaster, if the household intends to return. The property owned or being purchased by households that currently do not own a home and on which the household intends to build or is building a permanent home shall be exempt.

- C. Prorated Income

Monies that have been prorated and considered as income for eligibility purposes will be an exempt resource. Prorated student and self-employment income is exempt as a resource as long as a portion is still being counted as income.

#### D. Household Goods, Personal Effects, and Retirement Accounts

1. Household goods, personal effects, including one burial plot per household member, the cash value of life insurance policies, and livestock not excluded as income producing property are exempt resources.
2. All retirement accounts with Federal tax preferred retirement status are exempt resources. The following retirement accounts are exempt:
  - a. Pension or traditional defined benefit plan;
  - b. 401(K) plan and simple 401(K);
  - c. 501C (18);
  - d. 403(A) and 403(B) plans;
  - e. 408 plans including traditional individual retirement accounts (Roth IRA, SIMPLE IRA, and myRA), traditional Individual Retirement Annuities
  - f. 457 plan;
  - g. Federal employee thrift savings plan;
  - h. Keogh plan;
  - i. 529A funds including funds in a qualified ABLE program
  - j. Simplified employer plan;
  - k. Profit sharing plan; and,
  - l. Cash balance plans.
3. All tax preferred education accounts are exempt resources. The two types of tax preferred education savings accounts are:
  - a. Section 529 qualified tuition programs, which allow owners to prepay a student's education expenses or to contribute to an account to pay those expenses.
  - b. Coverdell education savings accounts and IRA type of account designed to pay a student's education expense.
4. One bona fide pre-purchased funeral agreement per household member, which may include one burial plot per household member, shall be excluded provided that the agreement does not exceed one thousand five hundred dollars (\$1,500) in equity value; the equity value over one thousand five hundred dollars (\$1,500) is counted as a resource. If a burial plot is included in the agreement, the burial plot portion will be exempted prior to determining the equity value of the funeral agreement.

#### E. Income-Producing Property, Including Vehicles

1. Any property that is producing an annual income consistent with its fair market value in the community, even if it is used only on a seasonal basis, shall be an exempt resource. Such property includes farm land and rental homes, or work related equipment, such as the tools of a tradesman or the machinery of a farmer, and vehicles which are essential to the employment or self-employment of a household member such as semi-tractor/trailer, boat, motor home, utility trailer, or seasonal or recreation vehicles used for income- producing purposes. Such property also includes livestock.

2. Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value shall be an exempt resource. The exclusion shall also apply to the value of the property sold under the installment contract, or held as security in exchange for a purchase price consistent with the fair market value of that property retained by seller.
3. Income-producing vehicles such as, but not limited to, a taxi, tractor, fishing boat, a vehicle used for deliveries, motor home, snowmobile, or camper is an exempt resource if it annually produces income consistent with its fair market value, even if only used on a seasonal basis. The exemption will apply when the vehicle is not in use because of temporary unemployment. This exemption also applies to ineligible non-citizens or disqualified persons whose resources are being considered available to the household.
4. Property essential to the self-employment of a household member engaged in farming (including land, machinery, equipment and supplies) shall be excluded for one (1) year from the date the household member terminates his or her self-employment from farming.

#### F. Inaccessible Resources

1. Resources having a cash value which is not accessible to the household include, but are not limited to, irrevocable trust funds, property in probate, or property prohibited from sale by a creditor holding a lien, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. In such cases, the local office shall establish that the property is for sale and that the household will accept a reasonable offer.
2. Non-exempt, non-liquid resource, as defined in Section 4.408.1, B, that would have a net return of one thousand five hundred dollars (\$1,500) or less if sold, shall be considered an inaccessible resource. The equity value shall be used to determine this amount. The equity value is fair market value less verified encumbrances (amount owed).
3. Any funds in a trust or transferred to a trust, and the income produced by that trust shall be considered inaccessible to the household if:
  - a. The trust arrangement will not likely cease during the certification period, and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period.
  - b. The trustee administering the funds is either a court, an institution, corporation or organization which is not under the direction or leadership of any household member; or an individual appointed by the court who has court imposed limitation placed on his/her use of funds which meet requirements of this section.
  - c. The trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member.
  - d. The funds held in irrevocable trust are either established from household's own funds and are used solely to make investments on behalf of the trust or to pay educational or medical expenses of persons named by the household creating the trust; or established from non-household funds by a non-household member.
  - e. Monies which are withdrawn from trust and dividends that are or could be received by the household shall be considered as income (~~see Section 4.404, f~~).

#### G. Resources with No Significant Return

Resources that, as a practical matter, the household is unlikely to be able to sell for any significant return because the household's interest is relatively slight or because the cost of selling the household's interest would be relatively great, shall be considered inaccessible. A resource shall be

so identified if its sale or other disposition is unlikely to produce any significant amount of funds for the support of the household. Verification of the value of a resource to be excluded shall not be required unless the Food Assistance worker determines that the information provided by the household is insufficient to permit a determination of the resource value or the worker believes that the information is questionable.

This provision regarding no significant return does not apply to negotiable financial instruments. A significant return or a significant amount of funds shall be any return/funds after estimated costs of sale or disposition and taking into account the ownership interest of the household. A significant return or a significant amount of funds is an amount that is estimated to be more than one thousand five hundred dollars (\$1,500).

#### H. Resources of Battered Women in Shelters

Residents of shelters for battered women and children may not have been able to retain access to all the resources of their former household. Therefore, in cases where access to a resource, such as jointly held bank accounts requiring both signatures, vehicles and property, is dependent upon the agreement of a person who still resides in the household where the woman was abused, the resource shall be considered inaccessible to the applicant.

#### I. Resources Used by Household Members

Where an exclusion applies because of use of a resource by or for a household member, the exclusion shall also apply when the resource is being used by or for an ineligible non-citizen or disqualified person whose resources are being counted as part of the household's resources.

#### J. Government Payments

The following government payments are received for a specific purpose or services and shall be excluded as a resource for Food Assistance eligibility.

1. P.L. No. 89-642. Section 11b) of the Child Nutrition Act of 1966 excludes the value of assistance to children under this Act from resources for Food Assistance purposes.
2. Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects, and the youth employment and training programs under Youth Employment and Demonstration Act of 1977 (P.L. No. 95-93) and extended under Title IV of the Comprehensive Employment and Training Amendments of 1978 (P.L. No. 95-524). (Note: Does not include other payments under the Comprehensive Employment and Training Act (CETA) or payments under the Youth Adults Conservation Corps.)
3. Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended: for example, payments made by the Department of Housing and Urban Development through the individual and family grant program or disaster loans or grants made by the Small Business Administration, Section 312(d) of Disaster Relief Act of 1974.

The Disaster Relief Act of 1974. P.L. No 93-288 as amended by P.L. No. 100-707, Section 105(i). the Disaster Relief and Emergency Assistance Amendments of 1988, 11/23/88. Payments precipitated by an emergency or major disaster as defined in this Act, as amended, are not counted as income or resources for Food Assistance purposes. This exclusion applies to Federal assistance provided to persons directly affected and to comparable disaster assistance provided by states, local governments, and disaster assistance organizations.

4. Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (P.L. No. 91-646. section 216).
5. Benefits received from the special supplemental food program for women, infants and

children (WIC) (P.L. No. 92-443). This payment is excluded as an in-kind benefit.

6. Payments or allowances made under any federal laws for the purpose of energy assistance, other than Part A of Title IV of the Social Security Act (42 U.S.C. 601, et seq.), or a one-time payment or allowance made under federal or state law for the cost of weatherization or emergency repair or replacement of an unsafe or inoperative furnace or other heating or cooling device is exempt as a resource.
7. HUD rental refund payments, made pursuant to settlement of Underwood v. Harris, are excluded in the month received and the following month.
8. Mandatory deductions from military pay for educational purposes while the participant is enlisted.

(P.L. No. 99-576, Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, Section 303(a) (1), 8/7/86.) Section 216 of P.L. No. 99-576 authorizes stipends for participation in study of Vietnam-Era veterans' psychological problems that are not excluded from income.

9. Payments to U.S. citizens of Japanese ancestry and resident Japanese non-citizens for up to twenty thousand dollars (\$20,000) each and payments to certain eligible Aleuts of up to twelve thousand dollars (\$12,000) each. P.L. No. 100-383. Section 105(f) (2) Civil Liberties Act of 1988.
10. P.L. No. 100-435, Section 501, 9/19/88, amended Child Nutrition Act to allow under WIC demonstration projects, benefits that may be exchanged for food at farmers' markets.
11. Payments made from the Agent Orange Settlement Fund (P.L. No. 101-201). All payments from the Agent Orange Settlement fund or any other fund established pursuant to the settlement in the Agent Orange product liability litigation are excluded from resources retroactive to January 1, 1989.

The disabled veteran will receive yearly payments. Survivors of deceased disabled veterans will receive a lump-sum payment. These payments were disbursed by the AETNA insurance company.

12. A federal earned income tax credit received either as a lump sum or as payments under Section 3507 or the Internal Revenue code for the month of receipt and the following month for the individual and that individual's spouse (P.L. No. 101-508).

A federal, state, or local Earned Income Tax Credit (EITC) would be exempted for twelve (12) months from receipt for any household member if the individual receiving the EITC was participating in the Food Assistance Program when the EITC was received and participation continues for twelve (12) months. Temporary non-participation due to administrative reasons, such as a delayed recertification, shall not affect the twelfth (12th) month participation requirement (P.L. No. 103-66, Mickey Leland Childhood Hunger Relief Act of 1993).

13. Any money received from the Radiation Exposure Compensation Trust Fund, pursuant to P.L. No. 101-426 as amended by P.L. No. 101-510.
14. P.L. No. 103-286. Section 1(a), 8/1/94, Section 1(a), provides in part that payments made to individuals because of their status as victims of Nazi persecution shall be disregarded in determining eligibility for and the amount of benefits or services to be provided under any federal or federally assisted program which provides benefits or services based, in whole or in part, on need.
15. P.L. No. 103-322. Section 230202, 9/13/94. Amendments to Section 1403 of the Crime Act of 1984 (42 U.S.C. 10602) provide in part that, notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a

federal program or a federally financed state or local program would otherwise pay:

- a. Such crime victim compensation program shall not pay that compensation;
- b. The other program shall make its payments without regard to the existence of the crime victim compensation program.

Based on this language, payments received under this program must be excluded from income for Food Assistance purposes.

16. P.L. No. 104-204. 9/25/96, requires that allowances paid under this law to children of Vietnam veterans who were born with spina bifida be excluded from resources.
17. P.L. No. 111-312, 12/17/10, and The American Taxpayer Relief Act of 2012 requires that Federal income tax refunds received beginning January 1, 2010 must be disregarded as a resource for twelve (12) months from the date of receipt by the client.

\*\*\*\*\*

#### 4.411.1 Treatment of Income and Resources of Disqualified and/or Sanctioned Members

A. Individual household members may be disqualified for being ineligible non-citizens, for failure or refusal to obtain or provide a Social Security Number (SSN), for intentional Program violation/fraud, for being a fleeing felon, for failing to comply with a work requirement, or for being a sanctioned ABAWD (Able Bodied Adult Without Dependents) who has received three (3) months of Food Assistance benefits within a thirty-six (36) month period.

B. During the period of time a household member is disqualified, the eligibility and benefit level of any remaining members shall be determined as follows:

1. Households containing members disqualified for Intentional Program Violation or fraud, or a work requirement sanction, or classified as a fleeing felon:

- a. Income, Resources, and Deductible Expenses

The income and resources of the disqualified household member(s) shall be counted in their entirety. Resources shall only be considered if the household is required to meet the resource standard as specified in Section 4.408. The allowable earned income, standard, medical, dependent care, and shelter deductions shall be allowed in their entirety.

- b. Eligibility and Benefit Level

The disqualified member shall not be included when determining the household's size for purposes of assigning a benefit level to the household. The disqualified household member will not be included when determining the household size for comparison against any eligibility standard, which includes the gross income and net income eligibility limits or the resource eligibility limits.

~~See Section 4.401.1 "for the gross income eligibility limits, Section 4.401.2 for the net income eligibility limits, and Section 4.408 for the resource eligibility limits."~~

2. Households containing members disqualified for being an ineligible non-citizen, for failure or refusal to obtain or provide a Social Security Number (SSN), or sanctioned as an able bodied adult without dependents (ABAWD) who has received three (3) months of Food Assistance benefits in a thirty six (36) month period:

- a. Resources

The resources of the disqualified and/or sanctioned member(s) shall be counted in their entirety to the remaining household members if the household is required to meet the resource standard as specified in Section 4.408.

b. Income

A pro rata share of the nonexempt income of the disqualified and/or sanctioned member(s) shall be counted as income to the remaining members. This pro rata share is calculated by dividing the income evenly among the household members, including, the disqualified member. All but the disqualified member's share is counted as income to the remaining household members.

If an ineligible non-citizen is also an ineligible student and purchases and prepares food with the household, the individual's income shall be prorated under the ineligible non-citizen provisions.

c. Deductible Expenses

The earned income deduction shall apply to the prorated income earned by the disqualified and/or sanctioned member that is attributed to the household. That portion of the household's allowable shelter and dependent care expenses which are either paid by or billed to the disqualified member shall be divided evenly among the household members, including the disqualified member. Legally obligated child support payments are deducted before prorating income. The shelter expense will be prorated except for the standard utility allowance (SUA). The full SUA will be added to the other prorated shelter components if the household qualifies for the SUA. All but the disqualified member's share is counted as a deductible expense for the remaining household members.

d. Eligibility and Benefit Level

The disqualified and/or sanctioned member shall not be included when determining the household's size for purposes of assigning a benefit level to the household. The disqualified or sanctioned household member will not be included when determining the household size for comparison against any eligibility standard, which includes the gross income, the net income eligibility limits, or the resource eligibility limits.

~~See Section 4.401.1 for the gross income eligibility limits, Section 4.401.2 for the net income eligibility limits, and Section 4.408 for the resource eligibility limits.~~

\*\*\*\*\*

#### **4.500 VERIFICATION AND DOCUMENTATION**

- A. Verification is the use of documentary evidence or a contact with a third party to confirm information and to establish the accuracy of statements PROVIDED BY THE HOUSEHOLD ~~on the application form, redetermination form, periodic report form, change report form, or information presented during the interview.~~
- B. The case record shall consist of statements and documentation regarding the sources and results of verification used to determine a household's eligibility. Such statements must be sufficiently detailed to support the determination of eligibility or ineligibility and to permit a reviewer to determine the reasonableness of the eligibility worker's determination. When making a decision of ineligibility, the case record must clearly indicate the reason for denial or termination and the verification used in making the decision. If information is considered questionable or if an alternate source of verification was requested, the reason for additional verification shall be documented in the case record.

The case record shall also contain all correspondence pertaining to fair hearings and administrative disqualification hearings.



Information to retain in the case record for fair hearings shall include, at a minimum, the household's request for a fair hearing, the scheduling notice with the hearing date and time, all decisions pertaining to the fair hearing, and any exceptions filed by the county department or the household.

Information to retain in the case record for administrative disqualification hearings (ADH) shall include, at a minimum, the notice to the individual of the alleged intentional program violation (IPV)/fraud, any notice given to the household waiving the household's right to a disqualification hearing, the scheduling notice of the disqualification hearing if the waiver is not signed and returned, all decisions issued regarding the outcome of the ADH hearing, and the disqualification notice sent to the household notifying the individual of the disqualification period.

- C. The local office shall provide each household at the time of application for initial certification, redetermination, and periodic report form with a notice that informs the household of verification requirements that the household must meet as part of the application, redetermination, or periodic report process. The notice will inform the household that the local office will assist the household in obtaining verification, provided the household is cooperating with the office. The notice shall be written in clear and simple language and shall meet bilingual requirements.
- D. The household has the primary responsibility for providing documentary evidence for required verification and to resolve questionable information. The local office shall assist the household to obtain the necessary documentation provided the household is cooperating with the local office.
- E. The household shall also be determined ineligible if it refused to cooperate in any subsequent review of its eligibility, including reviews generated by reported changes, recertifications, or as part of a quality control review in accordance with Section 4.903.42.

~~Detailed information regarding the verification of individual eligibility criteria will be found in the appropriate section below.~~

\*\*\*\*\*

#### 4.501 PRUDENT PERSON PRINCIPLE

The rules contained herein are intended to be sufficiently flexible to allow the eligibility worker to exercise reasonable judgment in executing his/her responsibilities.

In this regard, the prudent person principle may be applied. The term prudent person principle refers to reasonable judgments made by an individual in a given case. In making an eligibility decision, the eligibility worker should consider whether his/her judgment is reasonable, based on experience and knowledge of the program. ~~The eligibility worker is also responsible for exercising reasonable judgment in determining if a given number of individuals applying for Food Assistance fit the Program's definition of a household, as defined in Section 4.100.~~

\*\*\*\*\*

#### 4.502 VERIFICATION REQUIREMENTS AT APPLICATION, REDETERMINATION, AND PERIODIC REPORT

##### A. Verification Requirements at Application

##### 1. Expedited Service Requirements

Only verification of the identity of the applicant is required. When an authorized representative applies on behalf of a household, the identity of both the authorized representative and the head of household shall be verified. No requirement for a specific document may be imposed. Client declaration of Social Security Number(s) and residency shall be accepted.

Client declaration of other household circumstances shall be accepted when determining eligibility for expedited service, and verification of any client-declared information shall be postponed in accordance with ~~Section 4.205.11, B,~~ and verified prior to certification as outlined below. See also ~~Section 4.205.1~~

2. The following information shall be verified prior to certification:
  - a. Identity of the applicant;
  - b. Household's gross nonexempt income;
  - c. Information available through IEVS, including Social Security Numbers (SSNs) for all household members;
  - d. Non-citizen status of persons identified as non-citizens on the application;
  - e. Residency, except for homeless households, or households newly arrived in the state or county for whom third-party verification cannot reasonably be obtained.
3. The household shall be given a reasonable opportunity to submit verification of certain expenses in order to receive expense deductions AND EXCLUSIONS. If a deductible expense must be verified and obtaining verification may delay the household's certification, the local office shall advise the household that the household's eligibility and benefit level will be determined without providing a deduction OR EXCLUSION for the claimed but unverified expense. If the expense cannot be verified within thirty (30) calendar days of the date of application, the local office shall determine the household's eligibility and benefit level without providing a deduction OR EXCLUSION for the unverified expense.
  - a. Allowable medical expenses less reimbursement;
  - b. Legally-obligated child support payments;
  - c. Dependent care expenses; and,
4. For households eligible under basic or expanded categorical eligibility rules, verification of resources, gross and net income, SSN information, sponsored non-citizen information, and residency beyond that gathered by the public assistance program that confers eligibility shall not be required unless these eligibility factors are not already collected and verified by the other program, are considered questionable, or are unavailable to the Food Assistance Program. The local office shall verify that each member receives benefits or services from the program that confers basic or expanded categorical eligibility.
5. For households subject to an asset test, the household's written declaration of resources in excess of the resource limit is an acceptable form of verification. Verification Requirements at Redetermination and Periodic Report

**B. Verification Requirements at Redetermination and Periodic Report**

1. Eligibility factors not verified by the Income and Eligibility Verification System (IEVS) should be verified at redetermination only if they are incomplete, inaccurate, questionable, inconsistent, or outdated and would affect a household's eligibility or benefit level. Unchanged information shall not be verified unless the information is outdated.
2. A change in total monthly earned income of one hundred dollars (\$100) or more for each member must be verified at redetermination.
3. At redetermination, all households shall verify the following information if the source has changed or the amount has changed by more than twenty-five dollars (\$25) since the last time they were verified:

- a. Changes in unearned income;
  - b. Allowable medical expenses ~~SEE SECTION 4.407.61(B);~~
  - c. Legally-obligated child support;
  - d. Dependent care expenses;
  - e. Verification of the above factors, is optional if information is unchanged or changes by twenty five dollars (\$25) or less.
- 4. A reported Social Security Number(s) not verified at initial certification and newly obtained Social Security Numbers shall be verified through the IEVS OR SOLQ-I.
  - 5. For households subject to an asset test, the household's written declaration of resources in excess of the resource limit is an acceptable form of verification.
  - 6. If there has been a change in a deductible expense that must be verified and obtaining verification delays the household's redetermination processing, the local office shall advise the household that the household's eligibility and benefit level will be determined without providing a deduction for the claimed but unverified expense.

#### ~~C. Verification Requirements of Reported Changes~~

~~For the verification requirements for reported changes, see Section 4.604.1.~~

\*\*\*\*\*

#### 4.504 SOURCES OF VERIFICATION

The local office shall accept any pertinent documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application, redetermination, periodic report form, or change report form. If written verification cannot be obtained, the eligibility worker shall substitute an acceptable collateral contact ~~or a scheduled home visit. Home visits shall be used as verification only if documentation cannot be obtained and the visit is scheduled in advance with the household. Home visits are to be used on a case-by-case basis where the supplied documentation or verification is insufficient.~~

\*\*\*\*\*

##### 4.504.6 Information Considered Verified Upon Receipt

- A. ~~Verified upon receipt is a term given to a state-prescribed list of specific information that comes directly from the primary source of the information and is free from question.~~
- B. ~~Information that is considered verified upon receipt shall be acted upon for both simplified reporting households and non-simplified reporting households. Information considered verified upon receipt shall be acted on at the time of application, recertification, periodic report, and during a household's certification period if the information causes a change in the Food Assistance benefit amount. A household shall not be convicted of fraud for not reporting a change in information it is not required to report in accordance with Section 4.603.~~
- C. ~~Information considered verified upon receipt shall be considered verified unless the office has reason to believe that the information may be inaccurate. Advance notice of adverse action shall be given when acting on information that is considered verified upon receipt, except as noted in Section 4.608.1.~~
- D. ~~Administrative Error Claims may be established as a result of information considered verified upon receipt.~~

D. E. The local office shall consider only the following information as verified upon receipt:

1. — Social Security and SSI benefit amounts obtained from SSA.

SSI and benefit amounts obtained from the SSA are considered reported and verified on the day the information is first known to the agency, either through the IEVS, SDX, BENDEX or another automated interface of information, whichever is sooner.

2. — Death information received from the Burial Assistance program.

Death information received from the Burial Assistance program is considered reported and verified on the day the information is first known to the agency.

3. — Unemployment insurance benefits that are reported through the IEVS and obtained through the Department of Labor and Employment (DOLE).

The unemployment insurance benefit (UIB) information shall be considered reported and verified on the date of the IEVS notification. Advance notice of adverse action shall be given when acting on the change in information.

4. — Public Assistance (PA) benefit amounts (Colorado Works, Aid to the Needy Disabled (AND), Old Age Pension (OAP), Aid to the Blind (AB), and Colorado Supplement to SSI) obtained from the State Department.

Such information shall be considered reported and verified on the day the public assistance benefit amount is authorized.

5. — Information that is reported and verified to a public assistance program which results in a change to the PA benefit amount and that meets the Food Assistance regulations for verification ~~as specified in Section 4.500.~~

Such information shall be considered reported and verified on the day the public assistance program processes the change and authorizes the new PA benefit amount.

6. — Child support income and expense amounts obtained through the Automated Child Support Enforcement System (ACSES).

Such information is considered reported and verified on the day the information is reported through an automated interface with ACSES.

7. — Non-compliance information obtained from Employment First (EF) agencies for failure to participate in a mandated work program.

8. — Colorado intentional Program violations (IPV).

9. — Information obtained from the Systematic Alien Verification for Entitlements (SAVE) system regarding non-citizen status.

10. — Changes in household composition that are reported and verified and result in one or more members being removed from one Food Assistance household and added to a new or existing Food Assistance household. ~~See Section 4.304.2 for situations that involve two households requesting assistance for the same child. Adults may be removed from the household based on self-declaration, per Section 4.604, D.~~

Duplicate benefits shall not be issued for a particular individual when removing that individual from one Food Assistance household and adding him/her to a new Food Assistance household.

11. — Changes in household composition that are reported and verified by child welfare

agencies and result in a child being removed from one Food Assistance household and added to a new or existing Food Assistance household.

12. —The disqualification of a household member determined to be a fleeing felon or probation or parole violator ~~in accordance with Section 4.304.4.~~

\*\*\*\*\*

#### 4.504.61 Information Not Considered Verified Upon Receipt

- A. Some information received from sources other than the household are not considered verified. Such information shall be subject to independent verification prior to taking adverse action to reduce, suspend, terminate, or deny a household's Food Assistance benefits during the certification period. ~~Such information, once independently verified, shall be acted upon in accordance with Section 4.604.~~
- B. The following sources of information shall not be considered as verified upon receipt:
1. Death information received from a source other than the Burial Assistance program.
  2. Veterans Assistance (VA) benefit amounts obtained through the IEVS.
  3. Wage data obtained through the IEVS and the DOLE.
  4. IRS income and asset information obtained through the IEVS.
  5. Information regarding railroad retirement benefits obtained through the ievs.
  6. Information received from the Public Assistance Reporting and Information System (PARIS).
  7. Prisoner information received during the certification period.
  8. Information received from the National Database of New Hires (NDNH).
  9. Social Security benefit amounts reported via an award letter given by the household.
  10. IPV/disqualification data from another state as reported through the disqualified recipient database.

\*\*\*\*\*

#### 4.505.2 Verification of Social Security Numbers

- A. All Social Security Numbers (SSNs) provided by the household, including multiple SSNs issued by the SSA, shall be verified through the SSA in accordance with the Income and Eligibility Verification System (IEVS) procedures established by the State Department. SOLQ may be utilized to verify a SSN. Certification of an otherwise eligible household member shall not be delayed to verify the SSN provided by the client. Household members who provide a SSN shall not be denied benefits for failure or inability to present a social security card or other official documentation. Eligibility determinations and benefits will not be delayed to otherwise eligible households while awaiting a response from the IEVS. For basic categorically eligible participants, the local office shall accept SSNs as verified by the categorically eligible programs.
- B. When the local office receives notification through the IEVS that a participant's SSN cannot be verified or is otherwise discrepant, such as the name or number does not match SSA records, the local office shall:
1. Conduct a case record review to confirm that the SSN in the case record matches the SSN submitted to the SSA for verification. If an error occurred in the original submittal, such as digits transposed or an incorrect name submitted, the local office

shall correct the error and the SSN will be resubmitted through the IEVS for verification.

2. If no error is identified as outlined in 1, above, the local office shall advise the household in writing that a member's SSN could not be verified and instruct the household to contact the local office to resolve the discrepancy. This notice shall not constitute advance notice of adverse action.
3. The local office shall make every effort to assist the household in resolving the discrepancy, including referral to the appropriate SSA office and assisting the household in obtaining documents available to the local office which may be required by the SSA.
4. Should the household or participant fail or refuse to cooperate in resolving the discrepancy, the individual WHOSE ~~who's~~ SSN cannot be verified may be disqualified as having failed to provide an SSN until such time as the household/participant cooperates, unless good cause exists. Disqualification shall be effective the month following the expiration of the notice of adverse action.

\*\*\*\*\*

#### 4.505.51 Verification of Questionable Citizenship

- A. The following guidelines shall be used in considering whether or not an applicant's statement of citizenship is questionable:
  1. The claim of citizenship is inconsistent with statements made by the applicant, ~~or with other information on the application, recertification, periodic report form, change-report form, or on previous applications.~~
  2. The claim of citizenship is inconsistent with information received from another source.
- B. Application of the above criteria by the eligibility worker must not result in discrimination based on race, religion, ethnic background or national origin, and groups such as migrant farm workers or American Indians shall not be targeted for special verification. The eligibility worker shall not rely on a surname, accent or appearance that seems foreign to find a claim to citizenship questionable. Nor shall the eligibility worker rely on a lack of English speaking, reading or writing ability as grounds to question a claim to citizenship.
- C. The member whose citizenship is in question shall be ineligible to participate until proof of citizenship is obtained, except as provided in Section 4.505.6, E. Until proof of citizenship is obtained, the member whose citizenship is in question shall have his or her income, less a prorated share, and all of his or her resources considered available to any remaining household members ~~as set forth in Section 4.411.~~
- D. The method used to document verification of citizenship and the result of the verification shall be included in the case record.

\*\*\*\*\*

#### 4.505.6 Verification of Non-citizen Status

- A. All applicants for Food Assistance benefits shall be notified on the application form that the non- citizen status of any household member will be subject to verification by the U.S. Citizenship and Immigration Service (USCIS) through the submission of information from the application to the USCIS. The information received from the USCIS may affect the household's eligibility and level of benefits. The application shall contain a statement signed by an adult representative from each household which attests, under penalty of perjury, to citizenship or non-citizen status of each member.
- B. The local office shall verify the eligibility status of applicant non-citizens by submitting the non- citizen registration number through the save system. The office shall use the information from USCIS save to

determine eligibility for benefits. The use of SAVE shall be documented in the case record. If a non-citizen does not wish the office to verify his or her immigration status, the local office shall give the household the option of withdrawing its application or participating without that member.

- C. The USCIS Systematic Alien Verification for Entitlement (SAVE) system will verify the alien status of applicant non-citizens. The use of SAVE shall be documented in the case record. The record will contain the date that the primary or secondary request was submitted, along with a copy of the Form G-845 when applicable, and any response to the request for verification.
1. If the non-citizen status is not verified in the primary SAVE verification process, a USCIS Form G-845 will be submitted with a photocopy of the non-citizen's document to the Colorado Refugee Service Program (CRSP).
  2. If the proper USCIS documentation is not available, the non-citizen may state the reason and submit other conclusive verification. The local office shall accept other forms of documentation or corroboration from the USCIS that the non-citizen is classified pursuant to Section 207, Section 208, or Section 243(h) of the Immigration and Nationality Act, or other conclusive evidence such as a court order stating that deportation has been withheld pursuant to Section 243(h) of the Immigration and Nationality Act, which is codified throughout Title 8 of the United States Code. The federal references do not include any later amendments to or editions of the incorporated material. Copies of the federal laws are available for inspection during normal working hours by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository.
- D. If a non-citizen is unable to provide any USCIS document, such as an INS form I-94, the local office has no authority or responsibility to contact the USCIS.
- E. The local office shall provide an applicant non-citizen up to the thirtieth (30<sup>th</sup>) calendar day following the date of application to submit acceptable documentation of their non-citizen status or at least ten (10) calendar days from the date of the local office's request for an acceptable document.
- F. A non-citizen who has been given a reasonable opportunity to submit acceptable documentation and has not done so within the normal processing time shall not be certified for benefits until acceptable documentation is available, except as provided below. However, when the local office fails to provide a non-citizen applicant with a reasonable opportunity as of the thirtieth (30<sup>th</sup>) calendar day following the date of application, the local office must provide the household with benefits back to the date of application, provided the household is otherwise eligible. A non-citizen is ineligible to participate until acceptable documentation is provided, except as provided below:
1. The local office has submitted a copy of a document provided by the household to the USCIS or other federal agency for verification that bears on the individual's eligible alien status. In such instances, the local office must certify the individual for up to six (6) months from the date of the original request for verification pending the results of the investigation. Pending such verification, the individual's benefits will not be delayed, denied, reduced or terminated based on the individual's immigration status while awaiting a response to the request for verification.
  2. The local office has submitted a request to the SSA for information regarding the number of quarters of work that can be credited to the individual; or SSA has responded that the individual has fewer than forty (40) quarters, and the individual provides documentation from the SSA that the SSA is conducting an investigation to determine if more quarters can be credited. If the SSA indicated that the number of qualifying quarters that can be credited is under investigation, the local office shall certify the individual, pending the results of the investigation, for up to six (6) months from the date of the original determination of insufficient quarters.
- G. If the office determines that the documentation presented by the household is questionable or the

documents that are used to determine eligibility are not issued by the USCIS, the office will use a secondary SAVE process. The secondary verification process will also be used when primary verification is not available through SAVE.

The secondary verification process will consist of submitting a photocopy of the documentary evidence presented, with form G-845, to the U.S. Citizenship and Immigration Service.

- H. If the local office determines, after complying with the requirements of this section, that the non-citizen is not in an eligible alien status, the office shall take action, including sending proper notices to the household, to terminate, deny or reduce benefits. The household will have the opportunity to request a fair hearing prior to any adverse action taking effect, ~~pursuant to Section 4.802, et seq.~~
- I. If verification of eligible non-citizen status ~~as required by Section 4.505.51~~ is not provided on a timely basis, the household has the option of withdrawing its application or requesting that the eligibility of the remaining household members be determined. The income and resources of the individual whose non-citizen status is unverified shall be ~~treated in the same manner as set forth in Section 4.411 and~~ considered available in determining the eligibility of the remaining household members. If verification of eligible non-citizen status is subsequently received the local office shall act on the information as a reported change in household membership in accordance with timeliness standards. The non-citizen shall not be entitled to retroactive benefits.
- J. When any person in a household indicates inability or unwillingness to provide documentary evidence of non-citizen status, either for himself or any other household member, the household has the option of withdrawing its application or participating with the member in question classified as an ineligible non-citizen. In such cases the local office shall not continue efforts to obtain that documentary evidence.

\*\*\*\*\*

#### ~~4.505.61~~ — USCIS Documentation of Lawful Non-citizen Status

~~Non-citizens lawfully present in the United States will normally possess one of the following documents provided by the U.S. Citizenship and Immigration Service (USCIS). Possession of one of the following documents does not exempt a non-citizen from meeting the requirements set forth in Section 4.305.~~

#### A. — I-94 Arrival/Departure Record

- 1. — ~~The local office shall accept the INS form I-94 as verification of non-citizen status. If the INS form I-94 does not bear any of the section annotations and the non-citizen has no other verification of non-citizen classification, the local office shall advise the non-citizen to obtain documentation from USCIS verifying the individual's non-citizen classification.~~
- 2. — ~~If the form is annotated with Sections 207-208, 243(h), 241(b)(3), 501(e), or 584 of the Immigration and Nationality Act or if the form is annotated with any of the following terms or a combination of the following terms, refugee, parolee, paroled or asylum, the non-citizen is considered to be in a qualified alien status and eligible for Food Assistance in accordance with Section 4.305, B, 1. The section number normally appears on the front of an I-94, but may occasionally be found on the reverse.~~
- 3. — ~~The non-citizen shall also be advised at the eligibility interview that classification under Sections 207, 208, 243(h), 241(b)(3), 501(e) or 584 of the Immigration and Nationality Act shall result in eligible status for the period of seven years; that the non-citizen may be eligible if acceptable verification is obtained; and that the non-citizen may contact INS as stated previously, or otherwise obtain the necessary verification or, if the non-citizen wishes and signs a written consent, that the local office will contact the USCIS to obtain clarification of the non-citizen's status. If the non-citizen does not wish to contact the USCIS, the household shall be given the option of withdrawing its application or participating without that member.~~



B. ~~Resident Non-citizen Card (I-551)~~

~~These are normally referred to as green cards. This card is usually valid indefinitely if issued before July 1990 but may contain an expiration date on the reverse side if issued to a conditional non-citizen. These cards are issued to lawful permanent resident non-citizens and contain a photograph of the non-citizen. A Resident Non-Citizen Card (I-551) issued after July 1990 is good for a period of ten (10) years.~~

C. ~~Employment Authorization Card (I-688B)~~

~~One of several USCIS documents that indicate a non-citizen has been granted permission to work. Codes on the card indicate the person's immigration status. On the front of the card will be "274a" followed by other numbers and letters that refer to the section of the regulation authorizing employment. Section (a)(3) identifies refugees under Section 207, (a)(5) identifies asylees under Section 208, and (a)(10) identifies withholding of deportation under 243(h).~~

\*\*\*\*\*

#### 4.505.7 Verification of Non-citizen Sponsorship

A. The local office shall verify the following information at the time of initial application and recertification:

1. The income and resources of the non-citizen's sponsor and the sponsor's spouse (if living with the sponsor) at the time of the non-citizen's application for Food Assistance.
2. The names and alien registration numbers of other non-citizens for whom the sponsor has signed an affidavit of support or similar agreement. ~~The sponsor's income and resources shall be divided by the number of non-citizens he or she sponsors in accordance with Section 4.305.4, E.~~
3. The number of dependents who are claimed or who could be claimed for federal income tax purposes of the sponsor and the sponsor's spouse.
4. The name, address, and phone number of the non-citizen's sponsor.

B. Until the non-citizen provides information or verification necessary to determine eligibility, the sponsored non-citizen shall be ineligible. When such verification is provided, the local office shall act on the information as a reported change in household circumstances.

C. The eligibility of any remaining household members shall be determined. The income and resources of the ineligible non-citizen, excluding the attributed income and resources of the non-citizen's sponsor and sponsor's spouse, shall be ~~treated in the same manner as a disqualified member as set forth in Section 4.411 and~~ considered available in determining the eligibility and benefit level of the remaining household members.

If the sponsored non-citizen refuses to cooperate in providing and/or verifying needed information, other adult members of the non-citizen's household shall be responsible for providing and/or verifying the information. If the information or verification is subsequently received, the local office shall act on the information as a reported change. If the same sponsor is responsible for the entire household, the entire household is ineligible until such time as the needed information is verified. The local office must assist the non-citizen in obtaining verification provided the household is cooperating with the local office.

\*\*\*\*\*

#### 4.506 VERIFICATION OF INCOME

Monthly, gross nonexempt income shall be verified prior to initial certification, unless the household is entitled to expedited service and postponed verification for one month. Income is also verified at

redetermination and periodic report when a household reports that the amount of income has changed more than twenty-five dollars (\$25) or the source of income has changed.

~~Refer to Section 4.504 for additional forms of acceptable income verification.~~

A. Responsibility

1. Applicants are primarily responsible for furnishing income verification documents, a collateral contact, or the authorization needed to secure sufficient information to allow written or verbal verification by the eligibility worker. For public assistance (PA) recipients, the PA case record will normally be used as the source of verification.
2. Means of income verification include pension award letters, check stubs, employer letters, and collateral contacts with employers, agencies or other persons having knowledge of the household's circumstances.
3. When a collateral contact designated by the household cannot be expected to provide accurate third party verification, the local office shall ask the household to designate an acceptable collateral contact, provide an alternative form of verification or substitute a home visit.
4. In some instances, however, all attempts to verify income may be unsuccessful because the person or organization has failed to cooperate with the household. A cooperating applicant shall not be denied solely because a third party refuses to provide verification. The eligibility worker shall, in consultation with the applicant or other sources, arrive at a figure to be used for certification purposes and annotate the household's case record with information used to make an eligibility determination.

B. Continuing Employment

When the applicant has continuing employment, the previous month's income is the best indication and source of verification of the amount of income the household may expect to receive. If information, such as probable salary raise, overtime pay or layoff supplied by the household or collateral contact reveals that future income will differ substantially from the previous month's income, a reasonable estimate of income shall be made based on information obtained from the household members and/or collateral contacts. The method of determining and computing income shall be fully annotated in the case record.

C. Self-Employment

Self-employment verification may consist of tax documents, self-employment ledgers maintained by the household, receipts, or other documents used for verifying and documenting the household's self-employment income and expenses. If, at the time of initial certification, a household is recently self-employed or does not have adequate documentation of the household's self-employment income and expenses, the eligibility worker shall use the best information available to determine the household's monthly income. The household shall be encouraged to keep records of income and expenses for subsequent certifications. No specific verification shall be required and the documentation provided by the household shall be accepted unless questionable. ~~For s-corporations and limited liability corporations (LLC), see Section 4.403, F.~~

D. Educational Assistance

All educational income and financial aid is considered exempt income and does not require verification to determine a household's monthly income.

E. Verification of Terminated Employment

1. If information regarding the termination of employment is questionable, verification is necessary. The primary responsibility for providing verification rests with the household. If it is difficult or impossible for the household to obtain documentary evidence in a timely manner, the local office shall offer assistance.

2. Acceptable sources of verification include, but are not limited to, the previous employer, employee associations, union representatives and grievance committees and the Colorado Department of Labor and Employment (DOLE). Whenever documentary evidence is not available, a collateral contact shall be used.
3. If the household and the local office are unable to obtain verification for a questionable claim of resignation from employment due to discrimination practices or unreasonable demands by an employer because an employer cannot be located, the household shall not be denied.

F. Cases of No Reported Income

1. In addition to verifying reported income, the eligibility worker may have occasion to explore the possibility of unreported income. Prior to determining the eligibility of households who report no income or income so low as to place them at the maximum benefit level without consideration of deductible expenses, the eligibility worker must, through in-depth interviewing techniques, determine how the household maintains its existence and meets ongoing maintenance expenses. Collateral contacts with a person or persons knowing the household's circumstances IS are recommended. The existence of resources might be an explanation of how the household exists at the level of income reported.
2. When exploring the possibility of unreported income or how the household is meeting its expenses, the local office shall not initiate a request for verification of such information, but shall explore how the household is meeting its needs through an interview. If, at the time of recertification, the local office needs to explore the possibility of unreported income or how the household is meeting its needs, the household shall be contacted by telephone to resolve the discrepancy. If the household cannot be contacted, then the interview process outlined in Section 4.204 can be initiated.

\*\*\*\*\*

#### 4.507 VERIFICATION OF EXPENSES

A.——Verification of Dependent Care

Verification of dependent and child care expenses is required to grant a deduction. ~~Refer to Section 4.407.6 if the dependent care costs qualify as a medical deduction.~~

B.——Verification of Shelter and Utility Costs

- 1.——A household's declaration of its responsibility to pay shelter and utility costs, as well as the amount the household is responsible to pay, shall be considered an acceptable source of verification, unless questionable, to grant the household a deduction for the amount the household declares it is responsible for paying. ~~Deductions for utility allowances shall be granted in accordance with Section 4.407.31.~~
- 2.——Households that wish to claim shelter costs for a home that is unoccupied because of employment or training away from the home, illness or abandonment caused by a natural disaster or casualty loss must provide verification of actual utility costs if the costs would result in a deduction. These households are also responsible for providing verification of any other shelter costs if the cost is questionable and it would result in a deduction. The local office is not required to assist households in obtaining verification of this expense if the verification needs to be obtained from a source outside the county.
- 3.——If shelter expense is questionable and verification cannot be verified within thirty (30) calendar days from the date of application, the local office shall determine the household's eligibility and benefit level without providing a deduction for the unverified expense.

4. ~~————~~ If the household subsequently provides the missing verification for questionable shelter costs, the information will be handled as a reported change in accordance with ~~Section 4.604~~. The household shall be entitled to restoration of any lost benefits as a result of the disallowance of the expense which could not be verified within the thirty (30) day period, only if the client was not given at least ten (10) calendar days to provide verification or less than ten (10) calendar days if a necessary second interview could only be scheduled between the twentieth (20<sup>th</sup>) and thirtieth (30<sup>th</sup>) day of the processing period.

C. ~~————~~ Verification of Medical Expenses

1. ~~————~~ The amount of medical bills and the portion that is reimbursable shall be verified prior to initial certification. At recertification, total medical expenses shall be verified if the source has changed or the total amount has changed more than twenty-five dollars (\$25) since the last time they were verified, or the information is incomplete, inaccurate, inconsistent, or outdated. See ~~Sections 4.407.6 and 4.407.61~~ for eligibility criteria for household members entitled to these deductions.
2. ~~————~~ The household's monthly medical deduction for the certification period shall be based on the information reported and verified by the household, any anticipated changes in the household's medical expenses that can be reasonably expected to occur during the certification period based on available information about the recipient's medical condition public or private insurance coverage and current verified medical expenses. If the change cannot be reasonably anticipated, the household shall have the non-reimbursable portion of the medical expense considered at the time the amount of the expense or reimbursement is reported and verified.
3. ~~————~~ Any time questionable information is received, such as the identity of the person incurring medical costs, verification shall be obtained.
3. 4. If the household reports a change in its medical expenses, the local office shall verify the change and act on the change during the certification period if it will result in an increase to the household's benefit allotment. ~~If the reported change will result in a decrease to the household's benefits, the change shall not be made effective until the start of the new certification period. If a change in medical expenses is discovered from another source other than the household, the local office cannot act on the change unless it is considered verified on receipt. The household shall not be contacted to verify a change discovered through another source. If a household fails to verify changes in medical expenses, the worker shall not make the change.~~
4. 5. Households certified for twenty-four (24) months that incurred a one-time medical expense during the first twelve (12) months shall have the option of deducting the expense for one month, averaging the expense over the remainder of the first twelve (12) months of the certification period, or averaging the expense over the remainder of the certification period. One-time expenses reported after the twelfth (12<sup>th</sup>) month of the certification period will be deducted as a one-time monthly expense or averaged over the remaining months in the certification period, at the household's option.

D. ~~————~~ Verification of Child Support Expenses

1. ~~————~~ In order to receive a deduction, the household shall verify its legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays. The local office shall accept any document that verifies the household's legal obligation to pay child support, such as a court or administrative order or legally enforceable separation agreement.
2. ~~————~~ The local office shall accept documentation verifying a household's actual payment of child support including, but not limited to, cancelled checks, wage withholding statements, verification of withholding from unemployment compensation and

statements from the custodial parent regarding direct payments or third party payments that the noncustodial parent pays or expects to pay on behalf of the custodial parent.

3. Documents that are accepted as verification of the household's legal obligation to pay child support shall not be accepted as verification of the household's actual monthly child support payments.
4. In addition to requiring verification from the household, the local office shall be responsible for obtaining verification of the household's child support payments if the payments are made to the child support services agency. The local office shall give the household an opportunity to resolve any discrepancy between household verification and the verification received from the child support services agency. ~~Child support income and expense information received from the automated child support system shall be considered verified upon receipt (see Section 4.504.6).~~
5. At recertification OR PERIODIC REPORT, the local office shall require the household to re-verify the amount of legally obligated child support that a household member pays to a non-household member AND THE ACTUAL MONTHLY CHILD SUPPORT PAYMENTS MADE.

\*\*\*\*\*

#### 4.600—ONGOING CASE MANAGEMENT

~~When a household is certified for Food Assistance, a certification period is assigned. During the certification period, the household is required to report certain changes in its household circumstances. If a household does not report changes as required and as a result is overpaid Food Assistance benefits, the household will be held liable for repaying any benefits it was not eligible to receive in accordance with Section 4.800.~~

~~There are some changes that the household is not required to report but are considered known to the agency because the agency is made aware of those changes by the primary source of that information. See Sections 4.504.6 and 4.607 for these types of changes. The local office is required to act upon such information during the middle of the certification period. Claims may be established as a result of information considered verified upon receipt even if a household is not otherwise required to report such information.~~

~~All changes are acted on in accordance with Section 4.604.~~

\*\*\*\*\*

#### 4.601 GENERAL REQUIREMENTS FOR REPORTING CHANGES

- A. ~~Simplified reporting~~ Households are only required to report and verify if the household's combined gross income exceeds one hundred thirty percent (130%) of the Federal Poverty Level (FPL) for its household size.
- B. Households shall be required to report THE INCREASE IN INCOME changes in household circumstances as outlined in Section 4.603 no later than ten (10) calendar days from the end of the calendar month in which the change occurred. The local office has up to ten (10) calendar days to act on the information from the date the change is considered reported, ~~as outlined in Section 4.602.~~
- C. The household shall be allowed to report changes in person, by telephone, in writing, or through the online system. ~~A toll-free number or a number on which collect calls will be accepted shall be indicated on all Change Report Forms.~~

~~Changes reported by the household by telephone or in person shall be acted upon in the same manner as those reported on the Change Report Form. If reporting by mail, households will have met the reporting requirement provided the envelope is postmarked within the required ten (10) day calendar period. Public~~

assistance (PA) households which report a change in circumstances to the PA worker shall be considered to have reported the change for Food Assistance purposes.

- D. ~~A Change Report Form shall be provided to newly certified households at the time of certification and recertification and each time a change is submitted using the form. Households shall be notified of the receipt of the Change Report Form at the time the household is notified of an increase or decrease in benefits resulting from the reported change or at the same time the household is notified that additional verification is necessary to process the reported change.~~
- E. ~~If additional verification is required to process the reported change, the household shall be notified of the verification needed and the deadline for submitting required verification to the local office. The notice shall inform the household that the change must be verified prior to action being taken by the local office if benefits are to be increased. Households shall be advised that assistance can be obtained from the local office if the household experiences difficulty in obtaining required verification.~~
- F. ~~When a change in household circumstances occurs in a non-simplified reporting household and the local office has determined that a household has refused to cooperate in providing verification necessary to determine eligibility, the household's eligibility shall be terminated following a Notice of Adverse Action. The household shall not be denied if there is any question as to whether it has merely failed to cooperate as opposed to refused to cooperate.~~

~~For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to determine eligibility when a change of more than twenty-five dollars (\$25) occurs in a non-simplified reporting household. Households experiencing difficulty in obtaining necessary verification shall be assisted by the local office either in obtaining the documentary evidence or by making a collateral contact. The local office must ensure that the household was notified of the needed verification and sufficient time was allowed to obtain the verification.~~

\*\*\*\*\*

#### 4.602 WHEN CHANGES ARE CONSIDERED REPORTED

- A. ~~A change shall be considered to be reported as of the date the local office is notified of the change, if the required verification is received within ten (10) calendar days from the date the change is considered reported.~~
- ~~If verification is obtained after the ten (10) calendar day timeframe, or during the adverse action period, the office shall consider the change reported on the day the verification is received.~~
- ~~See Section 4.504.6 for what date is considered the change reported date for information that is considered verified upon receipt.~~
- B. ~~The local office has up to ten (10) calendar days to act on a change from the date the change is considered reported.~~

\*\*\*\*\*

#### 4.603 HOUSEHOLD RESPONSIBILITY TO REPORT CHANGES

- A. 1. Applicant households shall report all changes related to their Food Assistance eligibility and benefits at the certification interview, including any changes that occurred between the date an application is submitted and the date of the interview. If a change is reported in an initial month and the application has not yet been processed, the local office shall act on the most current information.
2. ~~Households are required to report changes in household circumstances in accordance with the provisions of this section, no later than ten (10) calendar days~~

~~from the end of the calendar month in which the change occurred. The local office has up to ten (10) calendar days to act from the date of the change is considered reported.~~

- B. 3. Households are required to report all changes in household circumstances when filing a redetermination and periodic report.
- C. 4. Able-Bodied Adults Without dependents, as defined in Section 4.100, that do not meet an exemption criteria, as outlined in Section 4.310.3, are required to report any changes in work hours that bring the individual below twenty (20) hours per week, averaged monthly.

A. ~~Additional requirements for Simplified Reporting Households~~

- 1. ~~All households with certification periods of six (6) months and twenty-four (24) months shall be considered simplified reporting households. At redetermination, households with six (6) month certifications are required to report all changes in household circumstances. Households with twenty-four (24) month certifications are required to report all changes in household circumstances at the twelve (12) month periodic reporting period and at redetermination (see Section 4.208.1).~~
- 2. ~~The only change a simplified reporting household shall be required to report during the certification period is if the household's combined gross income exceeds one hundred thirty percent (130%) of the federal poverty level, as applicable to their household size. Simplified reporting households that exceed the one hundred thirty percent (130%) federal poverty level (FPL), as applicable to their household composition, will have ten (10) calendar days from the end of the month in which the household exceeded one hundred thirty percent (130%) FPL to report the change to the local office.~~
- D. 3. Households who have no gross income threshold or who are eligible to be certified with a gross income level of up to two hundred percent (200%) of the federal poverty level, as applicable to the household size, who are initially certified with income above one hundred thirty percent (130%) FPL shall not be required to report increases in the household's combined gross income during the certification period. See Section 4.604 for clarification on how to act in situations when a household reports this information.
- E. 4. Households who have no gross income threshold or who are eligible to be certified with a gross income level of up to two hundred percent (200%) of the FPL, as applicable to the household size, who are initially certified with income below 130% FPL are required to report when the household's combined gross income exceeds one hundred thirty percent (130%) FPL applicable to the household size. After the household reports its first increase in income above one hundred thirty percent (130%) FPL, the household shall not be required to report further increases in the household's combined gross income for the remainder of the certification period.
- 5. ~~The only change a simplified reporting household must report after the interview is if the household's gross monthly income exceeds one hundred thirty percent (130%) of the FPL applicable to the household size. If a change is reported after the interview but before the application has been processed, the local office shall act on the most current information. If a change is reported after the application has been processed, then the change shall be acted upon in accordance with Section 4.604.~~
- F. 6. When a simplified reporting household submits a recertification or periodic report form and an interview is not conducted because one has been completed in the previous twelve month period, any changes that occur after the recertification or periodic report form was submitted are not required to be reported unless the change causes the household to exceed one hundred thirty percent (130%) FPL applicable to the household size. If an interview is scheduled with the household, then the household is

required to report any changes that occur between the time the household submitted the recertification application or periodic report form and the date of the interview.

- G. ~~7.~~ Upon benefit approval at initial application, redetermination and periodic change report, the household shall be provided with a notice of the gross income level that applies to its household size.

\*\*\*\*\*



\*\*\*\*\*

#### 4.604 ACTION ON REPORTED CHANGES

Changes shall be acted on in accordance with the following guidelines:

##### A. General Requirements

Changes to a household's circumstances shall be acted on prospectively and processed within ten (10) calendar days from the date the change is considered to be reported (see Section 4.602). Changes reported by households shall be documented in the Food Assistance case record to indicate the change and the date that the change was reported. ~~If a Change Report Form was used, the local office shall provide another Change Report Form to the household and notify the household of the receipt of the change report.~~ If the reported change causes a change to the household's allotment, a notice of action form shall be issued to inform the household of a new basis of issuance and/or a supplemental allotment. If a supplemental allotment is to be issued, the amount of the supplemental allotment shall be the difference between the allotment the household is eligible to receive, due to the reported change, and the allotment the household actually received for the current month. The household's total monthly allotment shall be increased for all subsequent months of the certification period that are affected by the change.

##### B. Changes Reported at Redetermination and Periodic Report

The county local office shall act on all changes reported by households filing a redetermination or periodic report. When a household reports information during the certification period that it was not required to report, the local office shall document the information in the case record. If the information is not acted upon because it would cause a reduction in benefits ~~for a simplified reporting household~~, and it does not meet the criteria outlined in D below, the local office shall review the information at the time of the household's subsequent certification, or at the twelve (12) month periodic report for those households certified for twenty-four (24) months to determine if the change should be acted upon when processing the redetermination or periodic report.

##### C. Changes Resulting In an Increase

1. The county local office shall act on any change reported by the household that will increase benefits. The increased allotment shall be made no later than the first allotment issued ten (10) or more calendar days after the change is considered to be reported. Any increase in benefits resulting from a change shall take effect the month following the month the change is considered reported per Section 4.602. Therefore, if such a change is reported after the twentieth (20th) of a month, and it is not possible to adjust the following month's allotment before the household's next normal issuance day, a supplemental allotment (in addition to the previously authorized monthly allotment) must be issued within ten (10) calendar days from the date the change was considered to be reported. A supplemental allotment shall not be issued for the month in which the change occurred.
2. Changes that result in increased Food Assistance benefits for a household must be verified by the household within ten (10) calendar days from the date the change is reported. If the household fails to provide verification, benefits shall remain at the original level until verification is obtained. Changes that result in increased Food Assistance benefits for a household must be verified prior to adjusting the household's allotment.

D.——Changes Resulting in Allotment Decreases

Changes that result in a decreased allotment shall be processed within ten (10) calendar days from the date the change is considered reported and made effective on the last day of the month in which the advance Notice of Adverse Action expires. The notice of adverse action expires eleven (11) calendar days from the date it is issued or fifteen (15) calendar days for households participating in the address confidentiality program (ACP).

~~For simplified reporting households,~~ The county local office shall not act on changes during the certification period that would decrease benefits, unless:

- 1.——The head of household requests that his/her case be closed;
  - 2.——The head of household requests that any member be removed;
  - 3.——An adult member requests to be removed from the case;
  - 4.——An adult member requests that he/she and his/her children be removed from the case;
  - 5.——The agency has information about the household's circumstances considered verified upon receipt ~~(see Section 4.504.6);~~
  - 6.——There has been a change in the household's public assistance grant;
  - 7.——The agency is acting on a mass change as outlined in ~~Section 4.607;~~ or,
- 8.——A household who has no gross income threshold or who is eligible to be certified with a gross income level up to two hundred percent (200%) FPL as applicable to the household size, which is initially certified with income below one hundred thirty percent (130%) FPL has a change in income that causes the household's combined gross monthly income during the certification period to exceed one hundred thirty percent (130%) FPL. ~~Refer to Section 4.401.1 for a description of households that are eligible to be certified with a gross income level up to two hundred percent (200%) FPL.~~
- 9.——The agency has received information from the Prisoner Verification System or the Deceased Matching System that a household member is no longer residing in the home and the household has failed to respond to the notice of match, provided insufficient evidence to the contrary, or has confirmed the match ~~in accordance with Section 4.604.1,B.~~

E.——Changes Resulting in Ineligibility

Changes that result in the household becoming ineligible shall be processed within ten (10) calendar days from the date the change is considered reported, unless the change does not require adverse action ~~per Section 4.608.1~~. Changes resulting in ineligibility shall be made effective on the last day of the month in which the Notice of Adverse Action expires. The notice of adverse action expires eleven (11) calendar days from the date it is issued or fifteen (15) calendar days for households participating in the address confidentiality program (ACP). ~~Documentation of the eligibility determination shall be noted in the case record.~~

~~Households that would otherwise become temporarily ineligible due to a periodic increase in recurring income or become ineligible due to another change that is not expected to continue in the subsequent month shall have their issuance suspended. Food assistance households may be placed in suspense for one month. Households not eligible for Food Assistance in the following issuance month must be discontinued from the Food Assistance Program. Households placed in suspense shall not receive a Food Assistance allotment for that issuance month. These households are considered to be eligible for the Food Assistance Program although receiving a zero allotment for the month the household is in suspense. If the suspended household again becomes eligible to receive an allotment after the month of suspense, the~~

~~local office shall issue benefits on the household's normal issuance date. A new application shall not be required if the current certification period has not expired during the month of the suspense.~~

F.——Changes in Categorical Eligibility

When a household reports a change during the certification period that results in it no longer meeting the criteria of the categorical eligibility tier it was originally certified ~~under per Section 4.206~~, the household's eligibility must be re-evaluated using the next appropriate category. If the reported change has not been verified, or is considered questionable, and it cannot be determined whether basic categorical eligibility, expanded categorical eligibility, or standard eligibility criteria should be used, a request for verification shall be initiated ~~per Section 4.604.1, Verification of Reported Changes~~.

G.——Changes in Household Composition

- 1.——Changes in household composition shall be acted on prospectively for the following month when the local office is able to affect the change prior to the determination of the household's allotment for that month. Anticipated income, deductions and other financial and non-financial criteria of the new member shall be considered in the prospective determination. The anticipated income, deductions, and other financial and non-financial criteria of a removed member shall no longer be considered when determining the household's eligibility ~~(see Section 4.304)~~. ~~For changes in household composition that cause a decrease in the household's allotment, refer to D, "Changes Resulting in Allotment Decreases," above, for how to act on the change for a simplified reporting household.~~

2.——Individuals Disqualified During the Certification Period

When an individual is disqualified during the household's certification period, the Food Assistance certification office shall determine the eligibility or ineligibility of the remaining household members based on information contained in the case record. If information in the case record is insufficient, additional information shall be obtained as needed.

- a.——If a household's benefits are reduced or terminated within the certification period because one or more of its members was disqualified for intentional program violation/fraud, the local office shall notify the remaining members of their eligibility and benefit level at the same time the disqualified member(s) is notified of his or her disqualification.
- b.——If a household's benefits are reduced or terminated within the certification period because one or more of its members is disqualified for being an ineligible noncitizen, noncompliance with a work requirement, or for failure or refusal to obtain or provide a Social Security Number, the local office shall send a Notice of Adverse Action which informs the household of the disqualification, the reason for the disqualification, the eligibility and benefit level of the remaining members, and the actions the disqualified member must take to end the disqualification.

H.——Changes Reported During the Certification Period That the Household Is Not Required To Report

When a household reports information during the certification period that it was not required to report, the local office shall document the information in the case record. If the information is not acted upon because it would cause a reduction in ~~a simplified reporting~~ household's benefit allotment and it does not meet the criteria outlined in ~~d~~ D above, the local office shall review the information at the time of the household's subsequent certification, or at the twelve (12) month periodic report for those households certified for twenty-four (24) months to determine if the change should be acted upon at that time.

I.——Refusal to Cooperate

~~The household shall be determined ineligible if it refused to cooperate in any subsequent review of its eligibility, including reviews generated by reported changes, recertifications, or as part of a quality control review in accordance with Sections 4.903.4, 4.903.41, and 4.903.42. If a simplified reporting household reports a change during the certification period that it was not required to report, the local office may request verification of the change, but if the household does not provide verification, then the case cannot be denied for failing to provide the requested information~~

\*\*\*\*\*

#### 4.604.1 Verification of Reported Changes

Changes that affect an allotment may require additional verification prior to taking action.

##### A. Unclear Information

1. If the local county office receives information about changes in a household's circumstances but cannot determine if or how the change will affect the household's benefits and the unclear information is:
  - a. Fewer than sixty (60) days old relative to the current month of participation; and
  - b. Was required to have been reported PER SIMPLIFIED REPORTING RULES as ~~outlined in Section 4.603~~; or
  - c. Appears to present significantly conflicting information about the household's circumstances from that used by the agency at the time of certification, including changes to the household's categorical eligibility tier, then;

The local office shall send a verification request notice requesting the household to provide the specific information or verification within the ten (10) calendar days plus one (1) additional calendar day for mailing time period. Households participating in the Address Confidentiality Program (ACP) shall receive five (5) additional calendar days for mailing time. The local office shall offer assistance in obtaining the verification if the household cannot obtain the information.

If the household fails or refuses to provide the verification or to request assistance with obtaining the verification within the ten (10) calendar days plus one (1) additional calendar day for mailing timeframe, or five (5) additional calendar days mailing time for ACP households, the process for closing the case shall be initiated. The Notice of Action Form shall advise the household that a change occurred that could not be acted upon, that the case is being closed, and that the household must provide the needed verification if it wishes to continue participation in the program. The household may be required to reapply if the household takes the required action after a break in benefits of more than thirty (30) calendar days.

2. If the information is more than sixty (60) days old relative to the current month of participation, was not required to be reported ~~per Section 4.603~~, or does not present significantly conflicting information from that used by the agency at the time of certification, the agency shall not act on this information or require the household to provide the information until the household's next recertification or periodic report.
3. Changes which result in increased Food Assistance benefits for a household shall be verified prior to adjusting the household's allotment. If the household fails to provide verification, benefits shall remain at the original level until verification is obtained. ~~Any increase in benefits resulting from a change shall take effect in accordance with the provisions outlined in Section 4.604(C)(1).~~

##### B. Computer Matches Not Considered Verified Upon Receipt

When information is received from a Prisoner Verification System indicating an individual is currently being held in a federal, state, or local detention or correctional institution for more than thirty (30) days or information is received from a Deceased Matching System indicating a household member has recently died, a notice of match shall be sent to the affected household prior to taking action to adjust or terminate the household's benefits.

The notice of match shall explain what information is needed to challenge the match and the consequences of failing to respond. The notice shall provide the household with ten (10) calendar days plus one (1) additional calendar day for mailing time to respond. Households participating in the Address Confidentiality Program (ACP) shall be provided five (5) additional calendar days for mailing time.

If the household substantiates the match, fails to respond to the notice, or fails to provide sufficient verification to challenge the match results, the agency shall remove the subject individual from the Food Assistance household and adjust benefits accordingly following the procedures outlined in Section 4.604.

If the household provides sufficient verification that the match is invalid, no further action shall be taken to remove the subject individual or adjust the household's benefits. The case record shall be documented accordingly.

\*\*\*\*\*

#### 4.605 FAILURE TO REPORT CHANGES

If Food Assistance benefits are over-issued because a household fails to timely report changes in household circumstances or income as required, a claim shall be established and a notice of overpayment and a repayment agreement will be mailed. If the discovery is made within the certification period, the household must be given advance notice of adverse action if its benefits are to be reduced.

\*\*\*\*\*

#### 4.606 HANDLING PUBLIC ASSISTANCE (PA) HOUSEHOLD CHANGES

- A. Households that receive public assistance benefits which report a change in circumstances to the public assistance worker shall be considered to have reported the change for Food Assistance purposes. Information that is reported and verified to a public assistance (PA) program which results in a change to the PA benefit amount and that meets the Food Assistance rules for verification shall be considered verified upon receipt (see Section 4.504.6). The date the change is considered reported and verified is the date the public assistance program processes the change and authorizes the new PA benefit amount. When acting on information considered verified upon receipt, advance notice of adverse action is required, except as noted in Section 4.608.1.
- B. When there is a change in a public assistance case and the county has sufficient information to make the corresponding Food Assistance adjustment, the county shall follow the guidelines listed below.
1. If the change in household circumstances requires a reduction or termination of both public assistance and Food Assistance, the following action will be required:
    - a. Send Notices of Adverse Action for both programs simultaneously with both notices bearing the same effective date.
    - b. If a household requests a fair hearing any time prior to the effective date of the Notice of Adverse Action, and its certification period has not expired, the household's participation in the program shall be continued on the basis authorized immediately prior to the Notice of Adverse Action, unless the household specifically waives continuation of benefits. Continued benefits shall not be issued for a period beyond the end of the current certification period.
    - c. If the household appeals only a PA adverse action and is granted interim relief,

Food Assistance benefits authorized prior to the adverse action shall continue or be restored. However, the household must reapply if the Food Assistance certification period expires before the hearing process is completed.

- d. If the household does not appeal the adverse action to decrease the public assistance or Food Assistance benefits within the adverse action period, the changes shall be made in accordance with timeframes outlined in Section 4.603.
2. If the change requires a reduction or termination of public assistance and/or increases in Food Assistance, the following action will be required:
    - a. A public assistance Notice of Adverse Action shall be issued to the household and Food Assistance benefits shall not be increased until the adverse action period expires. If the household does not appeal, the increase shall be effective in accordance with Section 4.604. The time limit for taking the action to increase Food Assistance benefits shall be calculated from the date the PA Notice of Adverse Action expires. The Notice of Adverse Action expires eleven (11) calendar days from the date it is issued or fifteen (15) calendar days for households participating in the address confidentiality program (ACP).
    - b. If the household requests a PA state appeal and is granted interim relief, the household is entitled only to Food Assistance benefits that were authorized immediately prior to the PA adverse action and action must be taken to correct the current basis of issuance. A Food Assistance claim must be made against the household if there was an overissuance for the period pending the appeal decision.
  3. When there is a change in a PA case which results in a termination of PA but there is insufficient information to determine Food Assistance eligibility, the county shall follow the guidelines listed below:
    - a. The PA Advance Notice of Adverse Action and a verification request notice are issued simultaneously. The public assistance notice makes the action effective on the last day of the month the notice is sent (or the last day of the following month, as appropriate, to allow for the required advance notice period). The routine extension on Food Assistance notices allows the household time to reapply for benefits at the appropriate local office.

The verification request notice shall advise the household of the information that needs to be verified for the household to continue to receive Food Assistance benefits. The worker shall not take any further action until the PA Notice of Adverse Action period expires or until the household requests a fair hearing. If the household does not appeal the PA action and request a continuation of benefits, the agency may resume action on the reported change.

Depending on the response or non-response to the verification request, the worker shall adjust the household's benefits if the verification of the household circumstances are received, or issue a Notice of Adverse Action to close the household's case if the household does not respond or refuses to provide information.
    - b. Households requesting a Food Assistance appeal may be entitled to continued benefits.
    - c. If the household requests only a public assistance state appeal and is granted interim relief, Food Assistance benefits authorized immediately prior to the adverse action will continue or be restored.

4. If the situation does not require a PA Notice of Adverse Action, the county local office shall take action based on the normal change reporting processing time frames and provide proper noticing as described in this section.

- C. Local offices shall ensure that there is no increase in Food Assistance benefits to households as the result of a penalty being imposed for an intentional program violation (IPV) or failure to comply with program requirements for a federal, state, or local means-tested program that distributes publicly funded benefits.

The local office shall calculate the Food Assistance allotment using the benefit amount that would be issued by that program if no penalty had been imposed to reduce the benefit amount. A situation where benefits of the other program are being frozen at the current level shall not constitute a penalty subject to these provisions. Changes in household circumstances that are not related to the penalty and result in an increase in Food Assistance benefits shall also not be affected by these provisions.

\*\*\*\*\*

#### 4.607 MASS CHANGES

There are certain changes that occur which are not caused by the household and which affect a mass portion of the Food Assistance caseload simultaneously. Such adjustments go into effect for all households at a specific point in time, and the local office will have full prior knowledge of the change. Such changes are generally initiated as a result of a change in state or federal regulations. When such changes occur, the local office shall be responsible for making the appropriate adjustments in the household's eligibility or allotment as directed by the State Department and noticing the client as outlined below:

- A. Federal adjustments to eligibility standards, allotments, and deductions; state adjustments to the Standard Utility Allowance; and any federal reduction, cancellation, or suspension of Food Assistance Program benefits.

These mass changes shall not require Advance Notice of Adverse Action to affected households; however, households shall be notified of such changes through the news media; posters in certification or issuance offices, or other locations frequented by participating households; or general notices mailed to participating households. Adjustments to federal standards and state adjustments to utility standards shall be implemented prospectively.

- B. Mass changes in public assistance grants, such as state-only Old Age Pension and Aid to the Needy Disabled; and Cost of Living Adjustments (COLA) and increases in federal RSDI, SSI benefits (Title XVI), and SSA (Title II).

These mass changes shall require a Notice of Adverse Action when food assistance benefits are decreased or terminated. Such notice for these mass changes shall be provided to the household as much before the household's scheduled issuance date as reasonably possible, although the notice need not be given any earlier than the time required for advance Notice of Adverse Action, per Section 4.608. Mass changes shall be processed prospectively for all households.

1. At a minimum, affected households shall be informed of:
  - a. The general nature of the change;
  - b. Examples of the change's effect on household's allotments;
  - c. The month in which the change will take effect;
  - d. The household's right to a fair hearing;
  - e. The household's right to receive a continuation of benefits if the following criteria are met:

- 1) The household has not specifically waived its right to a continuation of benefits;
  - 2) The household requests a fair hearing ~~in accordance with Section 4.802.2,~~ and the request for a hearing is based upon improper computation of Food Assistance eligibility or benefits, or upon misapplication or misinterpretation of state rules, or federal law or regulation.
- f. The household's liability for any over-issued benefits if the hearing decision is adverse;
  - g. General information on whom to contact for additional information.
2. Processing Mass Changes in Public Assistance (PA)

Public assistance grant cost-of-living increases and SSA/SSI cost-of-living increases are treated as mass changes in the Food Assistance Program. Mass changes shall be processed prospectively for all households. Food assistance benefits shall be recomputed and the change shall be effective in the same month as the change in the PA grant. If the local office has at least thirty (30) calendar days' advance knowledge of the amount of the public assistance adjustment, the Food Assistance benefits shall be recomputed and the change shall be effective in the same month as the change in the PA grant. In cases where the local office does not have thirty (30) calendar days' advance notice, the Food Assistance change shall be made effective no later than the month following the month in which the PA grant was changed.

\*\*\*\*\*

#### 4.608 ADVANCE NOTICE OF ADVERSE ACTION

- A. The local office shall notify a household of any change from its prior benefit level, the reason for the action and the date the action becomes effective on the Notice of Action form except as specified in Section 4.608.1. The Notice of Overpayment form is used as the Notice of Adverse Action for claims and the resulting recoupment for failure to respond.
- B. Households shall receive advance Notice of Adverse Action, giving at least ten (10) calendar days advance notice, plus one additional calendar day for mailing time, before any adverse action, such as a benefit reduction, suspension, termination or denial, becomes effective during the certification period, except as specified in Section 4.608.1. Households participating in the address confidentiality program (ACP) shall receive five (5) additional calendar days for mailing time.

When acting on a change ~~in accordance with Section 4.604,~~ if the ten (10) calendar day advance notice period, plus the additional calendar day(s) for mailing time, can be given in the month the Notice of Adverse Action is sent, the notice shall be effective on the last day of the month the notice is sent.

If the ten (10) calendar day advance notice period, plus the additional calendar day(s) for mailing, extends into the following month, the notice shall be effective on the last day of the month the notice expires. The notice of adverse action expires eleven (11) calendar days from the date it is issued or fifteen (15) calendar days for households participating in the ACP. The notice shall explain the reason for the proposed action and the date the action becomes effective.

If the advance notice period ends on a weekend or holiday and a request for a fair hearing and continuation of benefits are received the business day after the weekend or holiday, the request shall be considered timely received.

For changes that result in a decreased allotment or ineligibility, the local office shall issue a notice of adverse action within ten (10) calendar days of the date the change is considered reported, which will affect the next regularly scheduled allotment after the month in which the advance Notice of Adverse Action period expires (see ~~Section 4.602~~).



- C. Prior to the effective date of the Notice of Adverse Action, a participant household may request a conference with the staff of the certification office responsible for the decision to take the adverse action, or the household may file an appeal of such action.
- D. The participant household may also, prior to the effective date of the Notice of Adverse Action, either before or after the conference, appeal the proposed action. Households that timely request a hearing may be entitled to continued benefits. The eligibility worker shall explain to the household that a demand will be made for the amount of any benefits determined by the hearing officer to have been over-issued.

\*\*\*\*\*

#### 4.608.1 Changes Not Requiring Advance Notice of Adverse Action

Advance Notice of Adverse Action may be given, but is not required in the following situations:

- A. The Food Assistance Program Division initiates mass changes outlined in Section 4.607, paragraph A. Such changes must be publicized in advance. Announcements may be handed out or mailed to affected participant households.
- B. The local office determines based on reliable information that meets verification requirements that all members of a household have died.
- C. The local office determines based on reliable information that meets verification requirements that the household has moved from the project area.
- D. The household has been receiving an increased allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of when the increased allotment would terminate.
- E. The household's allotment varies from month to month within the certification period to take into account changes that were anticipated at the time of certification, and the household was so notified at the time of certification.
- F. The household applied for public assistance (PA) and Food Assistance jointly and has been receiving Food Assistance benefits pending the approval of the PA grant and was notified at the time of certification that Food Assistance benefits would be reduced upon approval of the PA grant.
- G. The certification office has elected to assign a longer certification period to a household certified on an expedited basis and for whom verification was postponed, ~~as detailed in Section 4.205.1,~~ provided the household has received prior written notice that verification may result in a reduction in benefits.
- H. As a result of the facility's loss of state or USDA/FNS authorization, the local office terminates eligibility of those residents in a drug or alcoholic treatment center or group living arrangement, who are certified with the facility acting as authorized representative.
- I. A household member is disqualified for an intentional program violation/fraud or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member. ~~The noticing requirements for an intentional program violation/fraud are contained in Section 4.803.7.~~
- J. Converting a household from cash and/or Food Assistance repayment for claims to allotment reduction as a result of a failure to make agreed-on repayments.
- K. The household was issued a repayment agreement for a claim and failed to respond. For households participating in the program that do not respond to the repayment agreement, benefit recoupment will be initiated.
- L. A change that is reported at redetermination for a household certified for six (6) months, or at PERIODIC

REPORT the 12-month mid-point for a household certified for twenty-four (24) months, which results in a decrease to the household's Food Assistance allotment. ~~Such changes shall be processed in accordance with the requirements and timeframes in Sections 4.209.1, and 4.210.~~

\*\*\*\*\*

#### 4.609.1 GENERAL ELIGIBILITY GUIDELINES [Rev. eff. 2/1/16]

- A. ~~Effective January 1, 2017,~~ h Households that receive Food Assistance and Colorado Works basic cash assistance that become ineligible for continued receipt of Colorado Works basic cash assistance as a result of changes in household income are eligible to receive Transitional Food Assistance (TFA), as provided for within this section. Colorado works diversion payments are not considered basic cash assistance. Colorado works basic cash assistance is defined in Section 3.601 of the Code of Colorado Regulations (9 CCR 2503-6).
- B. Households that are eligible to receive Transitional Food Assistance will have the Food Assistance benefit amount continued for five (5) months. The household's Food Assistance allotment will be continued in an amount based on what the household received prior to when the household's income made them ineligible for Colorado Works basic cash assistance. Only the following four (4) changes will be acted upon when determining the Food Assistance allotment that is to be continued.
1. The loss of the Colorado Works cash grant;
  2. Changes in household composition that result in a household member leaving and applying for Food Assistance in another household;
  3. Updates to the Food Assistance eligibility standards that change each October 1 as a result of the annual cost-of-living adjustments (see Section 4.607); and,
  4. Imposing an intentional program violation disqualification.
- C. When the Food Assistance benefit amount is continued, the household's existing certification period shall end, and the household shall be assigned a new five (5) month certification period. The recertification requirements ~~located within Section 4.209~~ that would normally apply when the household's certification period ends must be postponed until the end of the five (5) month transitional certification period.
- D. Households who are denied or not eligible for Transitional Food Assistance must have continued eligibility and benefit level determined in accordance with Section 4.604.
- E. The following households are not eligible to receive Transitional Food Assistance:
1. Households leaving the Colorado Works program due to a Colorado Works sanction; or,
  2. Households that are ineligible to receive Food Assistance because all individuals in the household meet one of the following criteria:
    - a. Disqualified for intentional program violation ~~in accordance with Section 4.803;~~
    - b. Ineligible for failure to comply with a work requirement ~~in accordance with Section 4.310;~~
    - c. Ineligible student ~~in accordance with Section 4.306;~~
    - d. Ineligible non-citizen ~~in accordance with Section 4.305.1;~~
    - e. Disqualified for failing to provide information necessary for making a determination of eligibility ~~in accordance with Section 4.500~~ or for completing any subsequent review of its eligibility ~~in accordance with Sections 4.209 and 4.210;~~

- f. Disqualified for receiving Food Assistance benefits in more than one household in the same month ~~in accordance with Section 4.803.3;~~
- g. Disqualified for being a fleeing felon ~~in accordance with Section 4.304.4;~~
- h. Able-bodied adults without dependents who fail to comply with the requirements of Section 4.310.

\*\*\*\*\*

#### 4.609.2 HOUSEHOLD CHANGES DURING THE TRANSITIONAL PERIOD [Rev. eff. 2/1/16]

A.——The household is not required to report any changes during the five (5) month transitional period, including changes that put the household over one hundred thirty percent (130%) of the Federal Poverty Level (FPL).

B.——~~Household changes that occur in the middle of the transitional period, including information considered verified upon receipt as outlined in Section 4.504.6, E, shall not be acted upon, with the following exceptions:~~

- 1.——~~Changes in household composition that result in a household member applying for Food Assistance in another household. The local office must remove any income, resources, and deductible expenses clearly attributable to the departing member.~~
- 2.——~~Updates to the Food Assistance eligibility standards that change each October 1 as a result of the annual cost-of-living adjustments (see Section 4.607).~~
- 3.——~~Imposing an intentional program violation disqualification.~~

\*\*\*\*\*

#### 4.609.3 CLOSING THE TRANSITIONAL PERIOD [Rev. eff. 2/1/16]

In the final month of the transitional period, the household must undergo the recertification process to determine the household's continued eligibility and benefit amount ~~(see Section 4.209).~~

\*\*\*\*\*

#### 4.609.4 HOUSEHOLDS WHO RETURN TO COLORADO WORKS DURING THE TRANSITIONAL PERIOD [Rev. eff. 2/1/16]

If a household receiving Transitional Food Assistance returns to Colorado Works during the transitional period, the local office shall complete the recertification process for Food Assistance to determine the household's continued eligibility and benefit amount ~~(see Section 4.209).~~ If the household remains eligible for Food Assistance, the household shall be assigned a new certification period ~~in accordance with Section 4.208.1.~~

\*\*\*\*\*

\*\*\*\*\*

#### 4.609.5 HOUSEHOLDS WHO REAPPLY FOR FOOD ASSISTANCE DURING THE TRANSITIONAL PERIOD [Rev. eff. 2/1/16]

A. At any time during the transitional period, the household may submit an application for recertification to determine if the household is eligible for a higher Food Assistance allotment. In determining if the household is eligible for a higher allotment, all changes in household circumstances shall be acted upon.

1. If the household is determined eligible for a benefit lower than its transitional benefit, the local office shall encourage the household to withdraw its application for recertification and continue to receive transitional benefits. If the household chooses not to withdraw its application, the local office shall deny the application and allow the transitional period to run its course.
2. If the household is eligible for benefits higher than its transitional benefit amount, the increased benefits shall take effect with the first day of the month following the month in which the reapplication was received. The transitional certification period shall be ended, and the household shall be assigned a new certification period that begins with the first day of the month following the month in which the household submitted the application for recertification. ~~The new certification period shall be assigned in accordance with Section 4.208.1~~

B. If a household applies for recertification during its transitional period, the local office shall observe the following procedures:

1. The local office must schedule and complete an interview IF ONE HAS NOT BEEN COMPLETED WITHIN THE PREVIOUS 12 MONTHS ~~in accordance with 4.204 and 4.209, D.~~
2. The local office must provide the household with a notice of required verification ~~in accordance with Section 4.500, C,~~ and provide the household a minimum of ten (10) calendar days to provide the required verification ~~in accordance with Section 4.209.1, D, 3.~~
3. Households shall be notified of their eligibility or ineligibility as soon as possible, but no later than thirty (30) calendar days following the date the application was filed.
  - a. If the local office does not determine a household's eligibility within thirty (30) calendar days following the application date, then the local office shall continue processing the application while continuing the household's transitional benefits. ~~See Section 4.205.3 for delays in processing.~~
  - b. If the application process cannot be completed because the household failed to take a required action, the local office may deny the application at that time or at the end of the thirty (30) calendar days.
  - c. If the household is determined to be ineligible, the local office shall deny the household's application for recertification and continue the household's transitional benefits to the end of the transitional benefit period, at which time the local office shall recertify the household in accordance with Section 4.209.

C. ~~Applications for recertification submitted in the fifth month of the transitional period must be processed in accordance with recertification procedures contained within Section 4.209.~~

\*\*\*\*\*

\*\*\*\*\*

4.609.6 TRANSITIONAL NOTICE REQUIREMENTS [Rev. eff. 2/1/16]

When a household is approved for Transitional Food Assistance, the household shall be notified of the following information:

- A. A statement informing the household that it will be receiving transitional benefits and the length of its transitional period; and,
- B. A statement informing the household that it has the option of applying for recertification at any time during the transitional period. The household must be informed that if it does not apply for recertification during the transitional period, then at the end of the transitional period the household must undergo the recertification process; and,
- C. A statement that if the household returns to Colorado Works during its transitional benefit period, the household must undergo the recertification process to determine the household's continued eligibility and Food Assistance allotment for Food Assistance; and,
- D. A statement explaining any changes in the household's benefit amount due to the loss of Colorado Works basic cash assistance or due to changes outlined in Section 4.609.1, B and C; and,
- E. A statement informing the household that it is not required to report and provide verification for any changes in household circumstances until the household completes the recertification process as required by Section 4.609.3; and,
- F. A statement informing the household that the local office will not act on changes that the household reports during the transitional period prior to the deadline specified in Section 4.609.3, E, and that if the household experiences a decrease in income or an increase in expenses or household size prior to that deadline, the household should apply for recertification.

\*\*\*\*\*

#### 4.702.1 Eligibility for Restoration of Lost Benefits

- A. To be eligible for restored benefits, the household must have had its Food Assistance benefits wrongfully delayed, denied, or terminated. Delay shall mean that an eligibility determination was not accomplished within PROCESSING TIMEFRAME STANDARDS the prescribed time limits set forth in Sections 4.205, 4.209.1 or 4.210.
- B. A restoration of benefits is warranted when a household has received fewer benefits than it was eligible to receive due to:
  - 1. An error by the local office;
  - 2. A court decision overturning or reversing a disqualification for intentional program violation; or,
  - 3. A determination by a court that the household should have received more benefits than it received during a given issuance period.
- C. In the event that a restoration is warranted according to the provisions in paragraph b of this section, benefits shall be restored for not more than twelve (12) months prior to whichever of the following occurred first:
  - 1. The date the local office was notified, in writing or orally, by the household or by another person or agency that a household received fewer benefits than it was eligible to receive;

2. The date the local office discovers through the normal course of business that an error occurred which lead to the loss of benefits for a specific household; or,
3. The date the household requested a fair hearing to contest the adverse action that resulted in the loss.

When determining the months for which a household may be entitled to restorations, month one (1) shall be the month prior to the month in which the error was discovered.

D. If the restoration is the result of a judicial action, the amount to be restored shall be determined as follows:

1. If the judicial action is the first action the household has taken to obtain a restoration of lost benefits, then benefits shall be restored for a period of not more than twelve (12) months prior to the date the court action was initiated.
2. If the judicial action is a review of an action taken by the local office, the benefits shall be restored for a period of no more than twelve (12) months prior to the first of either:
  - a. The date the local office was notified by the household or by another person or agency in writing, or orally, of the possible loss to the household, or,
  - b. The date the household requested a fair hearing.

E. In no case shall benefits be restored for more than twelve (12) months prior to the date the local office is notified of, or discovers, the loss. Benefits shall be restored even if the household is currently ineligible.

F. In the event that the State orders a reduction or cancellation of benefits, those households whose allotments are reduced or cancelled as a result of the enactment of those procedures are not entitled to restoration of lost benefits ~~unless the Secretary of Agriculture orders the State to restore reduced or cancelled benefits to affected households at a later date.~~ If the Secretary of Agriculture directs the State to restore reduced or cancelled benefits, the local office shall work promptly to issue such benefits.

\*\*\*\*\*

#### 4.702.2 Disputed Benefits

A. — If a household does not agree with any action taken by the local office to restore lost benefits or the amount of benefits determined to have been lost, the household may request a fair hearing within ninety (90) calendar days of the notice to the household of entitlement to a restoration. If such a request is made before or during the time period for which lost benefits are being restored, the local office will continue to issue the under-issued benefits pending the decision of the fair hearing. Once a final decision is reached, the local office shall restore benefits in accordance with the decision.

B. — If the household requests a fair hearing to dispute the local office's determination that the household is not eligible for restored benefits, restored benefits for the period in question shall not be issued to the household while awaiting the final agency decision.

C. — ~~Benefits lost more than twelve (12) months prior to the date that the local office was notified that a household received less benefits than it was eligible to receive shall not be eligible for restoration.~~

\*\*\*\*\*

#### 4.702.4 Errors by the Social Security Administration (SSA) Office

The local office shall restore to the household any benefits lost as the result of an error by the local office or by the Social Security Administration through joint processing. ~~Lost benefits shall be restored in accordance with Section 4.702.1.~~

Benefits shall be restored back to the date of an applicant's release from a public institution if, while in the institution, the applicant jointly applied for SSI and Food Assistance, but the local office was not notified on a timely basis of the applicant's release.

\*\*\*\*\*

#### 4.703 CALCULATING LOST BENEFITS

After correcting the loss for future months and excluding those months which occurred prior to the twelve (12) month restriction ~~outlined above at 4.702.2, C~~, the following method will be used to calculate the amount of benefits to be restored:

- A. If the household was eligible but received an incorrect allotment, the loss of benefits shall be calculated only for those months the household participated. If the loss was caused by an incorrect delay, denial, or termination of benefits, the month the loss initially occurred will be calculated as follows:
1. If an eligible household's application was erroneously denied, the month the loss initially occurred shall be the month of application or for an eligible household filing a timely reapplication, the first month of the new certification period.
  2. If an eligible household's application was delayed, the months for which benefits may be lost shall be calculated ~~in accordance with Section 4.702.1.~~
  3. If a household's benefits were erroneously terminated, the month the loss initially occurred shall be the first month benefits were not received as a result of the erroneous action.
- B. After computing the date the loss initially occurred, the loss shall be calculated for each month subsequent to that date until either the first month the error is corrected or the first month the household is found ineligible, not to exceed twelve (12) months prior to the date the loss was discovered ~~per Section 4.702.2, C.~~

\*\*\*\*\*

#### 4.801 CLAIMS AGAINST HOUSEHOLDS

A claim shall be established, ~~in accordance with the provisions of this section~~, when a household is over- issued benefits. An over-issuance means the amount by which Food Assistance benefits issued to a household exceeds the amount the household was eligible to receive.

\*\*\*\*\*

##### 4.801.1 Classification of Claims

Claims shall be classified as follows:

- A. "Agency Error Claims" - A claim shall be handled as an agency error claim if the over-issuance is caused by an error on the part of the local office. Instances that may result in an agency error claim include, but are not limited to, the following:

1. The local office failed to take prompt action on a change reported by the household;
2. The local office incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment;
3. The local office continued to provide a household Food Assistance benefits after its certification period expired without a redetermination of eligibility ~~in accordance with Sections 4.209 and 4.209.1.~~
4. The local office failed to provide a household a reduced level of Food Assistance benefits when its public assistance grant changed.

B. "Inadvertent Household Error Claims" - A claim shall be handled as an inadvertent household error claim if the over-issuance was caused by a misunderstanding or unintentional error on the part of the household. Instances that may result in an inadvertent household error claim include, but are not limited to, the following:

1. The household unintentionally failed to provide the local office with correct or complete information.
2. The household unintentionally failed to report changes in its household circumstances.
3. The household unintentionally received benefits or more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to such benefits.
4. The household was receiving Food Assistance solely because of basic categorical eligibility and the household was subsequently determined ineligible for Colorado Works or Supplemental Security Income (SSI) during the time that the benefits were being received. The claim must be based on a change in net income and/or household size.
5. The Social Security Administration failed to take action that resulted in the household's basic categorical eligibility and improper receipt of SSI. The claim must be based on change in net income and/or household size.

C. "Intentional Program Violation/Fraud Claims" - A claim shall be handled as an intentional program violation/fraud claim only if:

1. An administrative disqualification hearing official or a court of appropriate jurisdiction has found a household member has committed intentional program violation or fraud; or,
2. A signed waiver of intentional program violation is received; or,
3. A signed disqualification consent agreement has been obtained.

Prior to a waiver or consent agreement being signed or the determination of intentional program violation/fraud, the claim against the household shall be handled as an inadvertent household error claim.

\*\*\*\*\*

#### 4.801.2 Establishing Claims Against Households [Rev. eff. 1/1/16]

A. Establishing a Claim



1. The local office shall establish claims in accordance with the thresholds outlined below.
  - a. For participating households, the county department shall not establish a claim for overpayment due to Administrative Error (AE) or Inadvertent Household Error (IHE), except in the following circumstances:
    - 1) When the amount of the claim is greater than \$200; or,
    - 2) When the overpayment is identified through a federal or state level quality control review; or,
    - 3) When the inadvertent household error claim is being pursued as an intentional program violation, except that if the inadvertent household error claim does not result in an IPV, collection shall not be pursued.
  - b. For households not participating in the food assistance program, the county department shall not establish a claim for overpayment except in the following circumstances:
    - 1) When the amount of the claim is greater than \$400; or,
    - 2) When the amount of the claim is due to an inadvertent household error and is greater than \$200; or,
    - 3) When the overpayment is identified through a federal or state level quality control review.

An administrative error claim shall not be established for a period more than twelve (12) months from the date the local office was notified, in writing or orally, or discovered through the normal course of business that an error occurred which led to the household receiving more benefits than it was entitled to receive, excluding over-issuances identified through a federal or state quality control review.

An over-issuance of benefits identified through a federal or state quality control review shall be established, regardless of the amount and length of the overpayment.

2. Claims shall be established for benefits that are trafficked. The trafficking of benefits means:
  - a. The buying, selling, stealing, or otherwise AFFECTING effecting an exchange of Food Assistance benefits issued and accessed via Electronic Benefit Transfer cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone; or,
  - b. The exchange of Food Assistance benefits or EBT cards for firearms, ammunition, explosives, or controlled substances; or,
  - c. A Food Assistance participant, including the participant's designated authorized representative, who knowingly transfers Food Assistance benefit to another who does not, or does not intend to, use the Food Assistance benefits for the Food Assistance household for whom the Food Assistance benefits were intended; or,
  - d. The reselling of food that was purchased with Food Assistance benefits for cash; or,
  - e. Obtaining a cash deposit when returning water or other containers that were

purchased with Food Assistance benefits. Purchasing water containers is an eligible food item that can be paid for with Food Assistance benefits; however, when the container is returned, the deposit should be returned to the client's EBT card and not given to the client in cash; or,

- f. Attempting to buy, sell, steal or otherwise affect an exchange of Food Assistance benefits and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

3. Claims shall be established against the following individuals:

- a. All adult household members age eighteen (18) years of age or older at the time the over-issuance occurred, even if one or more of the adult household members are participating in another Food Assistance household at the time the claim is established;
- b. A person connected to the household, such as an authorized representative, who actually traffics or otherwise causes an over-issuance to occur.

B. Time Frame to Establish a Claim

Local offices shall establish all claims before the last day of the quarter following the quarter in which the overpayment or trafficking incident was discovered.

1. The discovery date for AE claims is the date that the local office was notified, in writing or orally, or discovered through the normal course of business that an agency error occurred that caused the household to receive more benefits than it was entitled to receive.
2. The discovery date for IHE and IPV non-trafficking claims shall be the date that verification used to calculate the over-issuance is obtained.
3. The discovery date for claims resulting from trafficking is the date of the court decision or the date the household signed a waiver of administrative disqualification hearing form or a disqualification consent agreement.

\*\*\*\*\*

4.801.3 Calculating the Amount of a Claim [Rev. eff. 1/1/16]

A. Compromising Claims

If the full amount or remaining amount of an administrative error or inadvertent household error claim cannot be liquidated in three (3) years, the local office may compromise the claim by reducing it to an amount that will allow the household to pay the claim in three (3) years. Intentional program violation claims shall not be compromised, unless specified in a court decision. The local office may use the full amount of the claim, including any amount compromised, to offset lost benefits. Decisions regarding compromises shall be documented in the case record.

A payment plan on a claim that has been compromised may be renegotiated if necessary. Claims that are already reduced by either an administrative or district court order are considered compromised claims, and thus are not eligible for additional compromise.

Local offices shall review the circumstances of a household that requests a compromise and determine if a compromise would be appropriate. Local offices do not have the option of refusing to consider compromising claims. Local offices cannot institute a policy of never compromising claims.

Claims should be compromised if the household demonstrates need, such as the inability to repay the claim within three (3) years, or if the household proves that financial, physical, or mental hardship would exist if forced to pay the full amount of the original claim. Some circumstances include, but are not limited to medical hardships, high shelter costs, loan payments, and other extraordinary expenses. A compromise based on hardship may be applied to a Food Assistance case whether or not the household is still receiving Food Assistance benefits.

Consideration should be given to the future earning potential of the household over the next three (3) years to pay back the claim based on age, disability, and other household factors.

**B. Claims Resulting from Trafficking**

The value of claims resulting from trafficking related offenses is the value of the trafficked benefits as determined by the individual's admission, through adjudication, or the documentation that forms the basis for the trafficking determination. Documentation could include such items as notarized statements or printouts from the Electronic Benefit Transfer (EBT) systems.

**C. Agency Error and Inadvertent Household Error Claims**

1. If the household received a larger allotment than it was entitled to receive, the local office shall establish a claim against the household that is equal to the difference between the allotment that the household received and the actual allotment it should have received; ~~in accordance with the thresholds outlined in Section 4.801.2, A.~~ Benefits authorized under Colorado Electronic Benefits Transfer System (CO/EBTS) shall be used to calculate the claim.

~~After calculating the amount of a claim and establishing claims in accordance with the thresholds outlined in Section 4.801.2, A, the local office may offset the amount of the claim against any amounts which have not yet been restored to the household. See Section 4.702. Expungements and any return of benefits that occur shall be used to offset the amount of the claim.~~

2. The claim may also be offset against restored benefits owed to:
  - a. Any household that contains a member who was an adult member of the original household;
  - b. Any household that contains an authorized representative that caused the overpayment or trafficking.
  - c. In no circumstance, may the local office collect more than the amount of the claim.
3. The Food Assistance office shall calculate the amount of an agency error or inadvertent household error claim back to the month the over-issuance occurred. However, in no event shall the amount of the administrative error claim be calculated for any period prior to one (1) year from the date the local office was notified, in writing or orally, or discovered through the normal course of business, that an error occurred which led to the household receiving more benefits than it was entitled to receive. All other claims shall be established for a period no greater than six years from the date the agency discovered the overpayment. ~~See Section 4.801.2, B, for when a claim is considered discovered.~~
4. For households eligible under basic categorical eligibility, a claim shall only be determined when it can be computed on the basis of changed household net income and/or household size. A claim shall not be established if there was not a change in net income and/or household size.

If a household receives both Temporary Assistance for Needy Families (TANF) and Food Assistance and mis-reports information to TANF in accordance with the TANF

reporting requirements, and the mis-report of information to TANF resulted in the household being over paid TANF or ineligible for TANF, any resulting Food Assistance claim should be based on the actual TANF issued.

5. The correct allotment shall be calculated using the same methods applied to an actual certification. The twenty percent (20%) earned income deduction shall not be applied to that part of any earned income that the household failed to report in a timely manner when this act is the basis for the claim; therefore, any portion of the claim that is due to earned income being reported in an untimely manner will be calculated without allowing the twenty percent (20%) earned income deduction. The actual circumstances of the household shall be used to calculate the claim. In instances when a claim is caused by the household's failure to report information as required, the amount of the claim is based on the allotment difference from what the household actually received compared to what the household would have received if the household would have reported the information as required. For example, if a simplified reporting household did not report income at initial application as required, the income used to calculate the overpayment would be the income that the household actually received in the month of application, as this would have been used to determine the household's ongoing monthly amount. Actual income received each subsequent month is not required to calculate each month of the claim, as any fluctuation in monthly income that was received by the household after the initial month of application was not required to be reported by the household. If the household failed to report a change in household circumstances that would have resulted in an increase in benefits during the time period of the claim, the local office shall act on the change in information as of the date the change was reported to the local office in accordance with Section 4.602.
6. WHEN A HOUSEHOLD CERTIFIED BELOW 130% FPL FAILS TO REPORT AN INCREASE IN HOUSEHOLD INCOME OVER 130% FPL ~~in cases involving reported changes,~~ the local office shall establish the claim for each month in which ~~the error would have affected the household's~~ AN OVER-ISSUANCE OF Food Assistance HAS OCCURRED allotment.
  - a. In cases involving household failure to report aN INCREASE IN INCOME ~~change in circumstances~~ within the required timeframes, the first (1st) month affected by the household's failure to report shall be the first (1st) month in which the change would have been effective had it been timely reported. However, in no event shall the determination of the first (1st) month in which the change would have been effective be any later than two (2) months from the month in which the change occurred. For purposes of calculating the claim, the local office shall assume that the change would have been reported properly and timely acted upon by the local office.
  - b. If the household timely reported aN INCREASE IN INCOME ~~change~~ but the local office failed to act on the change within the required timeframes, the first (1st) month affected by the local office's failure to act shall be the first (1st) month the office would have made the change effective had it acted timely. If a Notice of Adverse Action was required, the local office shall assume, for the purpose of calculating the claim, that the Notice of Adverse Action period ~~described within Section 4.608~~ would have expired without the household requesting a fair hearing.

D. Intentional Program Violation Claims

1. Prior to a waiver or consent agreement being signed or the determination of intentional program violation/fraud, the claim being pursued as an intentional program violation claim shall be pursued as an inadvertent household error claim. ~~Thresholds prescribed in Section 4.801.2, A, do not apply to IPV/fraud claims.~~
2. For each month that a household received an over-issuance due to an act of intentional program violation/fraud, the local office shall determine the correct amount of Food

Assistance benefits, if any, the household was entitled to receive. The amount of the intentional program violation/fraud claim shall be calculated back to the month the intentional program violation occurred. However, in no event shall the amount of the claim be calculated for any period prior to six (6) years from the date the intentional program violation was discovered. If the household member is determined to have intentionally failed to report a change in its household's circumstances, the claim shall be established for each month in which the failure to report would have affected the household's Food Assistance allotment.

3. Once the amount of the intentional program violation/fraud claim is established, the local office shall offset the claim against any amount of lost benefits that have not yet been restored to the household.

#### E. Court Actions

In cases where a household member was found guilty of fraud by a court of appropriate jurisdiction, the local office should request that the matter of restitution be brought before the court or addressed in the agreement reached between the prosecutor and individual.

\*\*\*\*\*

#### 4.801.4 Collecting Payments on Claims [Rev. eff. 1/1/16]

##### A. Claim Liability

###### 1. Liable Individuals

All adult household members age eighteen (18) years or older at the time the over-issuance occurred, sponsors, or other persons, such as an authorized representative who actually trafficked or otherwise caused an overpayment or trafficking to occur, that are connected with the household shall be jointly and severally liable for the value of any over-issuance of benefits to the household.

###### 2. Initiating Collection Action

- a. Local offices shall initiate collection action against any and all of the adult members or persons connected to the household at the time an over-issuance occurred. Under no circumstances shall the office collect more than the amount of the claim.
- b. The local office may pursue collection action against any household that has a member that was connected to the household that received or created an over-issuance.
- c. The local office shall initiate collection action for an unpaid or partially paid IPV claim even if collection action was previously initiated against the household while the claim was being handled as an inadvertent household error claim. Collection action shall be initiated unless the household has already repaid the over-issuance as a result of an inadvertent household error demand letter or the local office has documentation that shows the household cannot be located.
- d. ~~Local offices can suspend or terminate collection activity in accordance with Sections 4.801.42 and 4.801.43.~~

##### B. Postponing Collection Action

Collection action on inadvertent household error claims may be postponed in cases where an over-issuance is being referred to an administrative disqualification hearing or a court of appropriate jurisdiction, and the local office determines that collection action will prejudice the case.

For cases in which the household is appealing an agency error or inadvertent household error claim, collection action shall be suspended pending a final decision (see ~~Section 4.801-42~~). A household's appeal may include, but not be limited to, the establishment of the claim, the amount of the claim, and/or the household's liability to repay the claim.

C.——Notifying a Household of a Claim

1.——Notice of Over-Issuance and Repayment Agreement

Local offices shall initiate collection action on agency error and inadvertent household error claims by sending the household a State-prescribed written demand letter for the over-issuance. The letter shall inform the household of its rights and responsibilities concerning repayment of the claim as well as providing information on the availability of free legal services. All households that owe a claim shall be sent a demand letter. If the claim or the amount of the claim was not established at a fair hearing, the state agency must provide the household with a one-time notice of adverse action.

If the hearing official determines that a claim does, in fact, exist against the household, the household must be re-notified of the claim. The demand for payment may be combined with the notice of the hearing decision. Delinquency must be based on the due date of this subsequent notice and not on the initial pre-hearing demand letter sent to the household.

2.——Calculation of Claim

The local office shall mail the household an explanation of how the claim was calculated, showing each individual month and the cause for the claim. The State-prescribed form shall be used to determine and calculate the amount of the claim and to notify the household of the calculation. The form shall be mailed on a schedule that coincides with the mailing of the automated demand letter.

D.——Negotiating Payment Plans

Households participating in the program are subject to allotment reduction in accordance with Section 4.801.41, B, unless the claim is being collected at a higher amount.

If a household is not participating in the program, then the local office shall negotiate a payment schedule with the household, ~~as outlined in this section~~, for repayment of any amounts of the claim not repaid through a lump sum payment.

If a household is subject to allotment reduction, then a repayment agreement is not necessary unless the household wants to make voluntary payments in addition to the allotment reduction or elects to make monthly payments in amount greater than what would be repaid through allotment reduction.

1.——Establishing a Payment Plan

The local office shall negotiate a payment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment or through allotment reduction. Payments shall be accepted in regular installments. The household may use Food Assistance benefits as full or partial payment of any installment. The local office shall ensure that the negotiated amount of any payment schedule to be repaid each month through installment payments is not less than the amount that could be recovered through an allotment reduction. Once negotiated, the amount to be repaid each month through installment payments shall remain unchanged regardless of subsequent changes in the household's monthly allotment. However, both the local office and the household shall have the option to initiate renegotiation of the payment schedule if they believe that the household's economic circumstances have changes enough to warrant such action.

2.——Household's Failure to Respond to the Repayment Agreement

- a.——If the household against which collection action has been initiated for repayment of a inadvertent household or agency error or intentional program violation claim is currently participating in the program and does not respond to the written demand letter within ten (10) calendar days of the date the notice is mailed, benefit allotment reduction shall begin with the first (1st) allotment issued ten (10) calendar days from the date given to respond without further notice. A household that does not pay the claim amount in full by the deadline will have allotment reduction begin with the next allotment issued.
- b.——If the household is not participating in the program when collection action for claim is initiated or if collection action has been initiated for repayment of a claim and no response is made to the first (1st) demand letter, additional demand letters shall be sent at reasonable intervals, such as thirty (30) calendar days apart. The demand letters shall be sent until the household responds by paying or agreeing to pay the claim, until the criteria for suspending collection has been met or until the local office initiates ether collection actions.
- e.——If the household responds by requesting renegotiation of the amount of its repayment schedule within ten (10) calendar days from the date the notice is mailed but the local office believes that the household's economic circumstances have not changed enough to warrant the requested settlement, allotment reductions may be invoked.

3.——Household's Failure to Pay in Accordance with Payment Plan

- a.——If the household fails to make a payment in accordance with the established repayment schedule either by making a payment of a lesser amount or by making no payment, the local office shall send the household a notice that:
  - 1)——Explains that no payment or an insufficient payment was received;
  - 2)——Informs the household that it may contact the local office to discuss renegotiation of the payment schedule;
  - 3)——Informs the household that unless the overdue payments are made or the local office is contacted to discuss renegotiation of the payment schedule, the allotment of a currently participating household against which a claim has been established shall be reduced.
- b.——If the household responds to the notice, the local office shall take one of the following actions as appropriate:
  - 1)——If the household makes the overdue payments and wishes to continue payments based on the previous schedule, the local office shall permit the household to do so, but shall also require the household to sign a new repayment agreement;
  - 2)——If the household requests renegotiation and the local office concurs with the request, the local office shall negotiate a new payment schedule.

E.——Determining Delinquency

- 1.——Claims shall be considered delinquent under the following circumstances:



- a.——If a claim has not been paid by the due date on the demand letter or a satisfactory payment arrangement has not been made. The claim shall remain delinquent until payment is received in full, an allotment reduction is invoked, or a new repayment schedule is negotiated. The date of delinquency for such claims is the due date on the initial demand letter.
- b.——If a satisfactory payment arrangement has been made for a claim and payment has not been received by the due date specified in the established repayment schedule, the date of delinquency for such claims is the due date of the missed installment payment, unless the claim was delinquent prior to entering into a repayment agreement, in which case the due date will be the due date on the initial demand letter. The claim will remain delinquent until payment is received in full, allotment reduction is invoked, or once the local office resumes or re-negotiates the repayment schedule.
- e.——For purposes of the Federal Treasury Offset Program (TOP), a delinquent claim is one (1) which is past due more than one hundred eighty (180) calendar days.

2.——Claims shall not be considered delinquent under the following circumstances:

- a.——If another Food Assistance claim for the same household is currently being paid, either through an installment agreement or an allotment reduction, and the local office expects to begin collection on the claim once the prior claim(s) is settled;
- b.——If collection is coordinated through the court system and the local office has limited control over collection action;
- e.——If a household timely requests a fair hearing on the existence or amount of the claim and the local office suspends collection action pending a final agency decision. A claim awaiting a fair hearing decision shall not be considered delinquent (see Section 4.801.42).

If the hearing officer determines that a claim does in fact exist against the household, the household shall be sent another demand letter. Delinquency shall be based on the due date of this subsequent demand letter and not on the initial pre-hearing demand letter sent to the household. If the hearing officer determines that a claim does not exist, the claim is deleted shall be terminated and all collection activity ceased (see Section 4.801.43).

F.——Joint Collections Received for a Combination Food Assistance and Public Assistance Claim An

unspecified joint collection is when funds are received in response to correspondence or a referral that contained both the Food Assistance and other program claims, and the debtor does not specify to which program to apply the payment. The local office shall ensure that unspecified joint collections are pro-rated among the programs involved. When an unspecified joint collection is received for a combined public assistance and Food Assistance claim, each program shall receive its pro-rated share of the amount collected.

\*\*\*\*\*

#### **4.801.41**            Methods of Collecting Payment on Claims [Rev. eff. 1/1/16]

The local office shall collect claims through one of the following methods:

A. Lump Sum

The local office shall collect payments for total or partial payments of a claim in one lump sum if the household is financially able to pay the claim; however, the household shall not be required to liquidate all of its resources to make this repayment. If the household requests to make a lump sum cash and/or food benefit payment as full or partial payment of the claim, the local office shall accept this method of payment.

B. Food Assistance Allotment Reduction

1. The local office shall collect payments for claims from households currently participating in the Program by reducing the household's Food Assistance allotment. For claims where there is a court-ordered judgment for repayment, allotment reduction shall not occur.  
Prior to reduction, the local office shall inform the household of:
  - a. The appropriate formula for determining the amount of Food Assistance to be recovered each month; and,
  - b. The amount of Food Assistance the local office expects will be recovered each month; and,
  - c. The availability of other methods of repayment.
2. The household's allotment will be reduced based on the recoupment amounts for each type of claim, unless a payment schedule has been negotiated with the household. One- and two-person households receiving a minimum allotment, which is eight percent (8%) of the maximum allotment for a one-person household, shall be reduced to a lower benefit level in accordance with ~~Section 4.801.41, C, 2.~~  
  
The local office may collect on a claim by invoking benefit allotment reduction on two (2) separate households for the same claim. However, the local office is not required to perform this simultaneous reduction.
3. The amount of Food Assistance to be recovered each month through allotment reduction shall be determined as follows:
  - a. For agency error claims and inadvertent household error claims, the amount of Food Assistance to be recovered each month from a household shall either be ten percent (10%) of the household's monthly allotment or ten dollars (\$10) each month, whichever is greater.
  - b. For intentional program violation/fraud claims, the amount of Food Assistance benefit reduction shall either be twenty percent (20%) of the household's monthly allotment or twenty dollars (\$20) per month, whichever is greater. If the household is receiving the minimum allotment, the allotment reduction will be ten percent (10%) or ten dollars (\$10), whichever is greater.
4. Benefits authorized for an initial month will not be reduced to offset a claim. Ongoing benefits will be recouped based on the above criteria.

C. Benefits From an EBT Account

1. A household may pay all or a portion of the claim by using benefits from its EBT account. The office shall obtain written permission from the household to deduct benefits from the EBT account to pay a claim. The written agreement shall be obtained prior to removing benefits from the EBT account and shall include:
  - a. A statement that this collection activity is strictly voluntary;
  - b. The amount of the payment;
  - c. The frequency of the payments (i.e., whether monthly or one (1) time);
  - d. The length of the agreement;
  - e. A statement that the household may revoke this agreement at any time.
2. If the household provides oral permission, the local office can make a one- time deduction from an active EBT account for a one (1)-time reduction. The county shall provide the household with a written receipt within ten (10) business days. The receipt shall contain the information used for an active EBT account and indicate that this is a one-time reduction.
3. When a local office pursues payment on a claim by applying Food Assistance benefits from the household's stale EBT account, prior written notice shall be given to the household of the existing stale EBT account that may be applied to an outstanding claim. The county shall notify the household that the benefits will be applied to the claim unless the household objects to this offset. The household must be given ten (10) calendar days to object before the benefits can be applied as a payment to the claim. A stale EBT account means an account that has benefits but has not been accessed for at least three (3) consecutive calendar months.

D. Offset Against Taxpayer's State Income Tax Refund

1. ~~In accordance with Sections 26-2-133, C.R.S. and 39-21-108, C.R.S.,~~ t The state and county departments may recover overpayments of public assistance benefits through the offset (intercept) of a taxpayer's state income tax refund. Rent rebates are subject to the offset procedure. This method may be used to recover overpayments that have been:
  - a. Determined by final agency action, or,
  - b. Ordered by a court as restitution, or,
  - c. Reduced to judgment.
2. Pre-Offset Notice

Prior to certifying the taxpayer's name and other information to the Department of Revenue, the Colorado Department of Human Services shall notify the taxpayer in writing at his or her last known address that the state intends to use the tax refund offset to recover the overpayment. The pre-offset notice shall include the name of the local office claiming the overpayment, a reference to Food Assistance as the source of the overpayment, and the current balance owed.

3. Household Objection to Pre-Offset Notice

The taxpayer is entitled to object to the offset by filing a request for a local-level conference or state-level hearing within thirty (30) calendar days from the date that the state department mails its pre-offset notice to the taxpayer. ~~In all other respects, the procedures applicable to such hearings shall be those that are stated in Section 4.802.6.~~ At the hearing on the offset, the county department or Administrative Law Judge shall not consider whether an overpayment has occurred, but may consider, if raised by the taxpayer in his or her request for a hearing, whether:

- a. The taxpayer was properly notified of the overpayment;
- b. The taxpayer is the person who owes the overpayment;
- c. The amount of the overpayment has been paid or is incorrect;
- d. The debt created by the overpayment has been discharged through bankruptcy;
- e. Other special circumstances exist as described in Section 4.801.42.

E. Federal Treasury Offset Program (TOP)

The Treasury Offset Program, including the Federal Salary Offset Program (FSOP), is a mandatory government-wide delinquent debt matching and payment offset system in which the Colorado Food Assistance Program participates.

The Treasury Offset Program allows collection of delinquent debts by intercepting any allowable payment from the federal government. Federal payments eligible for offset include federal income tax refunds, federal employee salary, federal retirement payments (including military), contractor or vendor payments, and federal benefits such as Social Security and railroad retirement.

1. Claims Submitted for Offset

- a. A delinquent claim may be submitted to the USDA, Food and Nutrition Service (FNS) for the Treasury Offset Program (TOP). In order to submit a claim to the Federal Treasury Offset Program, the claim must be determined to be past due and legally enforceable. To determine that a claim is past due and legally enforceable, it must be determined that notification and collection attempts have taken place.
- b. For purposes of the Federal Treasury Offset Program (TOP), a delinquent claim is one which is past due more than one hundred eighty (180) calendar days.
- c. A claim is not considered delinquent if a fair hearing is pending concerning the claim; or the claim has either been discharged by bankruptcy or is subject to the automatic stay of the bankruptcy; or the claim is not considered delinquent as described within Section 4.801.4, E, 2.

2. Processing Fee

TOP, including the Federal Salary Offset Program (FSOP), is authorized to apply a processing fee each time a successful offset for collection occurs. Federal payroll offices participating in the TOP process may add another separate processing fee. The delinquent Food Assistance debtor is responsible for the fee each time it is applied. A TOP offset taken in error and later refunded will have the processing fee refunded, except for partially refunded offsets.

3. Notifying a Household of the Treasury Offset Program

At the time delinquent debts are sent to be certified to the FNS for the intercept by the Federal Treasury Offset Program, all delinquent debts for each individual are sent at one time. Prior to a claim being certified to the Food and Nutrition Service as a debt owed the local office, the individual shall be mailed an offset notice. The notice shall provide the following information:

- a. The local office has documentation that the individual identified with his or her Social Security Number (SSN) is liable for the specified unpaid balance of the claim; and,
- b. The individual has been notified about the claim and prior collection efforts have been made. The claim is past due and legally enforceable. All adults are liable for the overpayment of Food Assistance if they were household members when the Food Assistance benefits were over-issued. False statements concerning such liability may subject individuals to legal action (see Section 4.801.4, A); and,
- c. Debts over one hundred eighty (180) days delinquent to be referred to the Treasury for an administrative offset. The local office intends to refer the claim within sixty (60) days of the date of the notice unless the individual makes other repayment arrangements acceptable to the local office; and,
- d. Instructions on how to pay the claim, including the name, address, and telephone number of a person in the county who can discuss the claim and the intended offset with the individual; and,
- e. The individual is entitled to request a review of the debt's eligibility for referral to TOP. Individual review requests must be honored, regardless of whether they are received after the deadline requested. Claims that are currently under review will not be referred for the tax intercept.
- f. The notice shall include all claims for the household that are to be certified to TOP.

4. The individual may document any legitimate reason that the claim is not past due or legally enforceable.

5. The individual should contact the local office if he or she believes that a bankruptcy proceeding prevents collection of the claim or if the claim has been discharged in bankruptcy.

6. In some circumstances, the married individual may want to contact IRS before filing his/her income tax return. This is true if the individual is filing a joint return and his or her spouse is not responsible for the Food Assistance claim, and has income and withholding and/or estimated federal income tax payments. In such cases, the spouse may receive his or her portion of any joint return based on procedures prescribed by the IRS.
7. A federal employee may have his or her net disposable pay subject to garnishment under the offset. The Treasury may garnish up to fifteen percent (15%) of the net disposable pay. A federal employee may petition for a hearing only at the federal level to dispute the existence or the amount of the claim. The hearing occurs after the review period at the state-level and the subsequent submission to the Treasury as a valid offset.
8. The Office of Appeals within the Colorado Department of Human Services will review the proposed offset. The Office of Appeals shall find that the claim is past due and legally enforceable unless the household can provide documentation to show:
  - a. The claim is not delinquent or was already paid, and the individual provides proof of payment.
  - b. The individual is not the person that is liable for the claim.
  - c. A bankruptcy action prohibits collection of the claim because the automatic stay under Section 362 of the Bankruptcy Code is in effect with respect to the individual or his or her spouse, or that the claim was discharged by a bankruptcy proceeding.
  - d. There is some other reason that the claim is not delinquent or is not legally enforceable.
9. The decision by the Office of Appeals will be issued by means of written findings regarding the review. The written findings shall include notice to the individual who requested the review regarding the following:
  - a. If the Office of Appeals determines that the claim is past due and legally enforceable:
    - 1) The individual shall be notified that the claim will continue to be referred for the offset; and,
    - 2) The individual is entitled to have the Food and Nutrition Service (FNS) review the Office of Appeal's decision. FNS must receive a request to do so within thirty (30) calendar days after the date of the state agency's notice of review decision. A request for FNS review shall include the individual's SSN. The notice shall also provide the address of the regional office including the phrase "Tax Offset Review" in the address.
  - b. If the Office of Appeals determines that the claim is not past due or legally enforceable, it shall notify the individual and the local office that the claim will not be referred for the offset.
  - c. While the Office of Appeals or FNS is conducting a review of the debt, the debt is not eligible for the referral to TOP.

F. Pursuing Other Collection Activities

1. Local offices may pursue other collection actions, as appropriate, to obtain restitution of a claim against any household which fails to respond to a written demand letter for repayment of an agency error or inadvertent household error claim. In cases where a household member was found guilty of fraud by a court of appropriate jurisdiction, the local office may request that the matter of restitution be brought before the court or addressed in the agreement reached between the prosecutor and individual.
2. Other collection actions that the local office may pursue include the use of a collection agent, civil action, or criminal filing.
3. If the local office chooses to pursue other collection actions and the household pays the claim, payments shall be submitted to the Colorado Department of Human Services as required by Section 4.801.8. The local office's retention of recoveries shall be based on the actual amount collected from the household through such collections actions.
4. The local office shall not use other, involuntary collection methods against individuals in a household that is already having its benefit reduced.

\*\*\*\*\*

4.802 APPEAL PROCESS

Any household that is aggrieved by any action of the local office affecting the household's participation in the Program may appeal by requesting a local-level dispute resolution conference and/or a state-level fair hearing.

The right of a household to a local-level dispute resolution conference and state-level hearing is primarily to ensure that a proposed eligibility determination or action is valid; to protect the person against an erroneous action concerning benefits; and to ensure reasonable promptness of local office action. The individual may choose to request a local-level dispute resolution conference or bypass the dispute resolution process and appeal directly to the Colorado Department of Personnel and Administration, Office of Administrative Courts (OAC), for a state-level fair hearing.

The Office of Administrative Courts may deny fair hearings to those households that are disputing a mass change, ~~as outlined in Section 4.607~~ or the fact that a statewide reduction, cancellation, or suspension was ordered ~~per the provisions contained within Section 4.904.4~~. In such instances, the OAC is not required to hold a fair hearing unless the request is based on the household's belief that the rules were misapplied.

\*\*\*\*\*

4.802.2 Continuation of Benefits Pending Final Agency Decision

A. Eligibility for Continuation of Benefits

1. If a household requests a state-level fair hearing or local-level dispute resolution conference any time prior to the effective date of the Notice of Adverse Action and its certification period has not expired, the household's participation in the program shall be continued on the basis authorized immediately prior to the Notice of Adverse Action unless the household specifically waives continuation of benefits.

Households which were not given a ten (10) day advance notice period plus one (1) additional calendar day for mailing time, or five (5) additional calendar days for mailing for households participating in the address confidentiality program (ACP), prior to the effective date of the Notice of Adverse Action shall be given ten (10) calendar days after

the date the notice is mailed to appeal and receive continued benefits unless the household specifically waives continuation of benefits.

2. If a request for an appeal is not made within the times specified above, benefits shall be reduced or terminated as provided in the Notice of Adverse Action. However, if the household established that its failure to make the request within the established timeframe was for good cause, the local office shall reinstate the household's benefits on the basis authorized immediately prior to the Notice of Adverse Action, unless the household indicates it has waived continuation of benefits.
3. When benefits are reduced or terminated as a result of a mass change, participation on the prior basis shall be reinstated only if the issue being contested is that Food Assistance eligibility or benefits were improperly computed or that federal regulations or state rules were misapplied or misinterpreted by the local office.
4. Households appealing a decision based on information reported as part of the redetermination process are not eligible for continued benefits. The benefit allotment that a household is certified to receive shall not be issued beyond the end of the household's assigned certification period without a new determination of eligibility. The household's benefit allotment beginning with the new certification period shall be based on the new review of eligibility.

B. Household's Requirement to Request a Continuation of Benefits

If the letter or form requesting an appeal does not positively indicate that the household has waived continuation of benefits, the local office shall assume that continuation of benefits is desired, and the benefits shall be issued accordingly.

C. Establishing a Claim on Benefits That Were Continued

If the local office action is upheld by the hearing decision, a claim shall be established against the household for all over-issuances. This includes over-issuances due to the household receiving a continuation of benefits that the household was determined not eligible to receive. Such claims shall be classified as an inadvertent household error claim (see ~~Section 4.801.1~~).

D. The certification office shall promptly inform the household in writing if the benefits are reduced or terminated pending the final agency decision. Once benefits are continued or reinstated, benefits shall not be reduced or terminated prior to the receipt of the final agency decision unless:

1. The certification period expires. The household may reapply and may be determined eligible for a new certification period with a benefit amount as determined by the local office.
2. The Administrative Law Judge (ALJ) makes a preliminary determination, in writing and at the hearing, that the sole issue is one of federal law or regulation and that the household's claim that the local office improperly computed the benefits or misinterpreted or misapplied such law or regulation is invalid.
3. A change affecting the household's eligibility or basis of issuance occurs while the final agency decision is pending and the household fails to request a hearing after the subsequent Notice of Adverse Action.
4. A mass change affecting the household's eligibility or basis of issuance occurs while the final agency decision is pending. During the fair hearing period, the local office shall adjust allotments to take into account reported changes, information considered verified upon receipt, and mass changes, but not the factors on which the fair hearing is based.

\*\*\*\*\*



\*\*\*\*\*

#### 4.802.21 Households Disputing Restoration of Lost Benefits

- A. The household has the right to appeal through the fair hearing process if the household disagrees with any action taken to grant or restore lost benefits ~~(see Section 4.702.2)~~.
- B. If the local office has determined that a household is entitled to restoration of lost benefits but the household is appealing some action in calculating or restoring the lost benefits, the household shall receive the lost benefits as determined by the local office, pending the hearing results. Once a final agency decision is reached, the local office shall comply with that decision.
- C. To be eligible for restored benefits, the household shall have had its Food Assistance benefits wrongfully delayed, denied, or terminated. The term denial shall include the situation where, through certification office error, the net income was larger than required under proper determination, and because of this improperly set net income, the household was unable to get the proper allotment. Delay shall mean that eligibility determination was not accomplished within the prescribed time limits set forth in Section 4.205.2.

\*\*\*\*\*

#### 4.802.51 Management of Local-Level Dispute Resolution Conference

##### A. General Requirements

The local-level dispute resolution conference shall be conducted on an informal basis. Every effort shall be made to ensure that the applicant or participant household understands the local office's specific reasons for the proposed action and the applicable state department's rules. The local office shall have available at the conference all pertinent documents and records in the case file relevant to the specific action in dispute.

##### B. Scheduling a Conference

- 1. To the extent possible, the local-level dispute resolution conference shall be scheduled and conducted within the prior notice period. If the local office cannot conduct the conference within this period, for whatever reason, the adverse action in dispute shall be delayed until a conference can be held, unless the household waives continuation of benefits.
- 2. If a conference is requested to attempt to resolve a contested denial of expedited service ~~pursuant to Section 4.205.1~~, it shall be scheduled within two (2) working days of the receipt of the request for a conference unless the household requests that the conference be held later. Prior notice is not required.
- 3. The local office shall provide reasonable notice to the household of the scheduled time and location for the conference, or the time of the scheduled telephone conference. Notice shall be in writing; however, verbal notice may be given to facilitate the dispute resolution process.

##### C. Location

The local dispute resolution conference shall be held in the county department or agency where the proposed decision is pending and before a person who was not directly involved in the initial determination of the action in question. The local-level conference may be conducted either in person or by telephone. If a telephonic conference is requested, it shall be agreed upon by the applicant or

participant. In the event the household does not speak English or is visually or hearing impaired, an interpreter or translator shall be provided by the local office.

D. County Representatives

The individual who initiated the action in dispute shall not conduct the local-level dispute resolution conference. The county, agency caseworker, or other person who initiated the action in dispute shall attend the local-level conference and present the factual basis for the disputed action. The person designated to conduct the conference shall be in a position which, based on knowledge, experience, and training, would enable him or her to determine if the proposed action is valid.

E. Joint Dispute Resolution Processes

Two (2) or more county departments may establish a joint dispute resolution process. If two or more counties establish a joint process, the location of the conference need not be held in the county or agency taking the action, but the conference location shall be convenient to the applicant or participant.

F. Notice of Dispute Resolution Conference Decision

1. If the additional information presented in the conference proves that the adverse action is not warranted, the case record shall be documented and the Notice of Adverse Action cancelled.
2. At the conclusion of the conference, the person presiding shall reduce to writing the agreement entered into by the parties. Such agreement shall be signed by the parties and/or their representatives and shall be binding upon the parties. A copy of the written decision shall immediately be provided to the applicant or participant and/or his or her representative. The local office shall also forward a copy of the decision to the Colorado Department of Human Services, Food Assistance Program, within five (5) working days of the hearing, regardless of whether or not the client was in agreement with the outcome.
3. In the event the dispute is not resolved, the person presiding shall prepare a written statement indicating that the dispute was not resolved. The decision shall include:
  - a. A statement explaining the applicant or participant's right to request a state-level fair hearing;
  - b. The time limit for requesting a state-level hearing; and,
  - c. If appropriate, a statement that the household's previous benefit amount will continue pending a final state decision in accordance with Section 4.802.2, if appealed to the state within ten (10) calendar days from the date of the conference decision.

\*\*\*\*\*

**4.802.61** Hearing Denials or Dismissals

A. The Office of Administrative Courts (OAC) shall not deny or dismiss a request for a hearing unless:

1. The request is not received within the time period specified in Section 4.802.1.
2. The request is withdrawn in writing by the household or its representative; or,
3. The household or its representative fails, without good cause, to appear at the scheduled hearing.

- B. The ALJ shall not enter a default against any party for failure to file a written answer to the notice of hearing, but shall base the initial decision upon the evidence presented at the hearing.
- C. When the Administrative Law Judge dismisses an appeal for reasons other than failure to appear, the decision of the Administrative Law Judge (ALJ) shall be an initial decision, which shall not be implemented pending review by the Office of Appeals and entry of an agency decision.
- D. When an appellant fails to appear at a duly scheduled hearing, having been given proper notice, and without having given timely advance notice to the ALJ of acceptable good cause for inability to appear at the hearing at the time, date and place specified in the notice of hearing, then the appeal shall be considered abandoned, and an order of dismissal shall be entered by the ALJ and served upon the parties by the Office of Administrative Courts. The order of dismissal for failure to appear shall not be implemented pending review by the Office of Appeals and entry of a final agency decision.

The appellant, however, shall be afforded a period of ten (10) calendar days from the date the order of dismissal was mailed, during which the appellant may explain in a letter to the Administrative Law Judge the reason for his or her failure to appear. If the ALJ then finds that there was acceptable good cause for the appellant not appearing, the ALJ shall vacate the order dismissing the appeal and reschedule another hearing date.

If the appellant does not submit a letter seeking to show good cause within a period of ten (10) calendar days, the order of dismissal shall be filed with the Office of Appeals of the State Department. The Office of Appeals shall confirm the dismissal of the appeal by an agency decision, which shall be served upon the parties and the interested Division of the State Department. Within three (3) working days after the effective date of the decision, the local office shall implement necessary actions to provide benefits in the correct amount, to terminate benefits, to recover benefits incorrectly paid, and/or other appropriate actions in accordance with the rules.

If the appellant submits a letter seeking to show good cause and the Administrative Law Judge finds that the stated facts do not constitute good cause, he/she shall enter an initial decision confirming the dismissal. ~~The appellant may file exceptions to the initial decision pursuant to the provisions outlined at Section 4-802.63, D.~~

\*\*\*\*\*

#### **4.802.62 State-Level Hearing Decisions**

- A. Decisions of the Administrative Law Judge (ALJ) shall not run counter to Federal law, State Department rule, or state statute, and shall be based on the hearing record.  
  
The exclusive record for an initial decision by the ALJ shall constitute the verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceedings. This record shall be retained in accordance with normal retention periods. This record shall also be available to the household or its representative at any reasonable time for copying and inspection.
- B. Following the conclusion of the state hearing, the Administrative Law Judge (ALJ) shall promptly prepare and issue an initial decision and file it with the Colorado Department of Human Services, Office of Appeals.
- C. Initial Decision
  - 1. The Office of Administrative Courts shall render an initial decision within twenty (20) calendar days of the hearing date. However, if the head of the household or his representative requests a delay in the proceedings, the time limit for action on the decision may be extended for as many days as the hearing is delayed, up to thirty (30) calendar days.
  - 2. The initial decision shall make an initial determination whether the county or State Department or its agent acted in accordance with, and/or properly interpreted, the rules of the State Department. The Administrative Law Judge may determine whether statutes

were properly interpreted and applied only when no implementing State rules exist. The Administrative Law Judge has no jurisdiction or authority to determine issues of constitutionality or legality of departmental rules.

3. The initial decision shall advise the household that failure to file exceptions to provisions of the initial decision will waive the right to seek judicial review of a final agency decision affirming those provisions.
4. The Office of Appeals shall promptly serve the initial decision upon each party by first class mail and shall transmit a copy of the decision to the Divisions of the State Department that administer the program(s) pertinent to the appeal.
5. The initial decision by the ALJ shall summarize the facts of the case, specify the reasons for the initial decision, and identify the supporting evidence and the pertinent rule.
6. The Office of Appeals of the State Department, as the designee of the Executive Director, shall review the initial decision of the Administrative Law Judge and shall enter a final agency decision affirming, modifying, reversing, or remanding the initial decision. The initial decision shall not be implemented pending review by the Office of Appeals and entry of a final agency decision.

While review of the initial decision is pending before the Office of Appeals, the record on review, including any transcript or tape of testimony filed with the Office of Appeals, shall be available for examination by any party at the Office of Appeals during regular business hours.

#### D. Exceptions to the Initial Decision

1. Any party seeking an agency decision which reverses, modifies or remands the initial decision of the Administrative Law Judge shall file exceptions to the decision with the Office of Appeals within fifteen (15) calendar days - plus three (3) calendar days for mailing - from the date the initial decision is mailed to the parties. Exceptions shall state specific grounds for reversal, modification or remand of the initial decision.
2. If the party asserts that the Administrative Law Judge's findings of fact are not supported by the weight of the evidence, the party shall simultaneously with or prior to the filing of exceptions request the Office of Administrative Courts to cause a transcript of all or a portion of the hearing to be prepared and filed with the Office of Appeals. The exceptions shall state that a transcript has been requested, if applicable. Within five (5) calendar days of the request for transcript, the party requesting it shall advance the cost to the transcriber designated by the Office of Administrative Courts unless the transcriber waives the prior payment.

A party who is unable because of indigence to pay the cost of a transcript may file a written request, which need not be sworn, with the Office of Appeals for permission to submit a copy of the hearing tape instead of the transcript. If submission of a tape is permitted, the party filing exceptions shall promptly request a copy of the tape from the Office of Administrative Courts and deliver it to the Office of Appeals. Payment in advance shall be required for the preparation of a copy of the tape.

3. If the exceptions do not challenge the findings of fact, but instead assert only that the Administrative Law Judge improperly interpreted or applied State rules or relevant statutes, the party filing exceptions is not required to provide a transcript or tape to the Office of Appeals.
4. The Office of Appeals shall serve a copy of the exceptions on each party by first class mail. Each party shall be limited to ten (10) calendar days from the date exceptions are mailed to the parties in which to file a written response to such exceptions. The Office of Appeals shall not permit oral argument.

5. The Office of Appeals shall not consider evidence that was not part of the record before the Administrative Law Judge. However, the case may be remanded to the Administrative Law Judge for rehearing if a party establishes in its exceptions that material evidence has been discovered which the party could not with reasonable diligence have produced at the hearing.
6. The Division(s) of the State Department responsible for administering the program(s) relevant to the appeal may file exceptions to the initial decision, or respond to exceptions filed by a party, even though the Division has not previously appeared as a party to the appeal. ~~The Division's exceptions or responses shall be filed in compliance with the requirements of Section 4.802.63, D, 1, above.~~ Exceptions filed by a Division that did not appear as a party at the hearing shall be treated as requesting review of the initial decision upon the State Department's own motion.

#### E. Final Agency Decisions

1. The Office of Appeals shall enter a final agency decision resolving the appeal within sixty (60) calendar days after the hearing was requested.
2. In the absence of exceptions filed by any party or by a Division of the State Department, the Office of Appeals shall review the initial decision and may review the hearing file of the Administrative Law Judge and/or the taped testimony of witnesses before entering a final agency decision. Review by the Office of Appeals shall determine whether the decision properly interprets and applies the rules of the State Department or relevant statutes and whether the findings of fact and conclusions of law support the decision. If a party or Division of the State Department objects to the agency decision entered upon review by the Office of Appeals, the party or Division may seek reconsideration ~~pursuant to Section 4.802.63, F.~~
3. The Office of Appeals shall mail copies of the final agency decision to all parties by first class mail.
4. For purposes of requesting judicial review, the effective date of the final agency decision shall be the third (3rd) day after the date the decision is mailed to the parties, even if the third day falls on Saturday, Sunday, or a legal holiday. The parties shall be advised of this in the agency decision.

#### F. Motion for Reconsideration of a Final Agency Decision

1. A motion for reconsideration of a final agency decision may be granted by the Office of Appeals for the following reasons:
  - a. Upon a showing of good cause for failure to file exceptions to the initial decision within the fifteen (15) calendar day period ~~allowed by Section 4.802.63, D, 1;~~ or,
  - b. Upon a showing that the agency decision is based upon a clear or plain error of fact or law. An error of law means failure by the Office of Appeals to follow a rule, statute, or court decision that controls the outcome of the appeal.
2. No motion for reconsideration shall be granted unless it is filed in writing with the Office of Appeals within fifteen (15) calendar days of the date that the agency decision is mailed to the parties. The motion shall state specific grounds for reconsideration of the agency decision.
3. The Office of Appeals shall mail a copy of the motion for reconsideration to each party of record and to the appropriate Division of the State Department.

G. Acting on Decisions

1. Initial decisions shall not be implemented pending review by the Office of Appeals and entry of a final agency decision.
2. The state or county department shall initiate action to comply with the final agency decision within three (3) working days after the effective date. The department shall comply with the decision, even if reconsideration is requested, unless the effective date of the agency decision is postponed by order of the Office of Appeals or a reviewing court.
3. If the State Department rules that the household had its Food Assistance benefits wrongfully delayed, denied or terminated, the local office shall provide retroactive benefits. If the State Department decides that benefits were over-issued previous to and during the pendency of the determination of final agency action, a claim for over-issued benefits will be prepared.
4. Final agency decisions which result in an increase in household benefits shall be reflected in the benefit allotment within ten (10) days of the receipt of the decision, even if the local office is obligated to provide a supplementary allotment or otherwise provide the household with the opportunity to obtain the allotment outside of the normal cycle. However, the local office may take longer than ten (10) days if it elects to make the decision effective in the household's normal issuance cycle, provided that the issuance will occur within sixty (60) days from the household's request for the hearing.
5. Final agency decisions which result in a decrease in household benefits shall be reflected in the next scheduled issuance following receipt of the decision, unless the decision is stayed by the Office of Appeals upon a showing of irreparable harm.

\*\*\*\*\*

4.803 INTENTIONAL PROGRAM VIOLATIONS AND FRAUD [Rev. eff. 1/1/16]

- A. Local offices shall be responsible for investigating any case of alleged intentional program violation/fraud and insuring that appropriate cases are acted upon either through administrative hearings; by referral to a court of appropriate jurisdiction; by obtaining a waiver of administrative hearing; or by obtaining a signed disqualification consent agreement.
- B. Local offices are encouraged to refer for prosecution under state fraud statutes those individuals suspected of committing fraud, particularly if large amounts of benefits are suspected of being fraudulently obtained or the individual is suspected of committing more than one (1) fraudulent act. The local office shall confer with its legal representative to determine the types of cases that will be accepted for possible prosecution.

Local offices are also encouraged to enter into prosecution agreements with their district court. Agreements should include information on how, and under what circumstances, cases will be accepted for possible prosecution and any other criteria set by the court for accepting cases for prosecution, such as a minimum amount of over-issuance that resulted from the intentional program violation.

- C. Administrative disqualification procedures or referral for prosecution should be initiated by the local office anytime it has sufficient documentary evidence to substantiate that an individual has committed one or more acts of intentional program violation/fraud ~~as defined in Section 4.803.2~~. If administrative disqualification procedures or referral for prosecution is not initiated for a case involving an over-issuance caused by a suspected act of intentional program violation/fraud, an inadvertent household error claim shall be established against the household.

- D. In cases where the determination of fraud is reversed by a court of appropriate jurisdiction or by a final agency decision, the local office shall reinstate the individual in the Program if the household is otherwise eligible. The local office shall restore any benefits that were lost as a result of the disqualification ~~in accordance with the procedures specified in Section 4.702.~~
- E. The local office shall inform the household in writing of disqualification penalties for intentional program violation each time it applies for Program benefits. The penalty warning will appear in clear, boldface lettering on the Food Assistance application forms and shall serve as notification to the household.

\*\*\*\*\*

#### **4.803.2 Determination of an Intentional Program Violation/Fraud [Rev. eff. 1/1/16]**

- A. An intentional program violation shall be established only if an administrative disqualification hearing official or a court of appropriate jurisdiction has found a household member has committed an intentional program violation or fraud or if a signed waiver of administrative hearing or a signed disqualification consent agreement has been obtained.
- B. For purposes of determining, through administrative disqualification hearings, whether or not a person has committed an intentional program violation, the determination shall be based upon whether the person intentionally:
  - 1. Made a false or misleading statement, or misrepresented, concealed or withheld facts; or,
  - 2. Committed any act that constitutes a violation of the Food and Nutrition Act of 2008, as amended, these Food Assistance Program rules, Federal Food Assistance Program regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of Food Assistance benefits, authorization cards or reusable documents as part of an automated benefit delivery system access device.

“Intentionally” means a false representation of a material fact with knowledge of that falsity, or omission of a material fact with knowledge of that omission.
- C. The determination of intentional program violation shall be based upon clear and convincing evidence that demonstrates that the household member(s) committed and intended to commit intentional program violation ~~as defined in B, above.~~ “Clear and convincing” means evidence which is stronger than a “preponderance of evidence” and which is unmistakable and free from serious or substantial doubt.
- D. The same act of intentional program violation repeated over a period of time shall not be separated so that separate disqualification periods can be imposed.
- E. The burden of proving intentional program violation is with the local office.
- F. Disqualification periods shall be imposed based on the following:
  - 1. Administrative Disqualification Hearing (ADH)

If an IPV/fraud is determined through an ADH, the individual must be notified in writing once it is determined that he/she is to be disqualified. The disqualification period shall begin no later than the second month which follows the date the individual receives written notice of the disqualification.

2. Waiver of an Administrative Disqualification Hearing

If an IPV/fraud is determined through the client signing a waiver of an administrative disqualification hearing form, then the period of disqualification shall begin with the first month which follows the date the household member receives written notification of the disqualification.

3. Court Decisions

If an individual is determined through a court to be disqualified for an IPV/fraud, but the date for initiating the disqualification period is not specified, the county department shall initiate the disqualification period for currently eligible individuals within forty five (45) calendar days of the date the disqualification was ordered. Any other court imposed disqualification shall begin within forty five (45) calendar days of the date the court found a currently eligible individual guilty of civil or criminal misrepresentation or fraud.

4. Disqualification Consent Agreements

Unless contrary to the court order, the period of disqualification shall begin within forty-five (45) calendar days from the date the household member signed the disqualification consent agreement. However, if the court imposes a disqualification period or specifies the date for initiating the disqualification period, the state agency shall disqualify the household member in accordance with the court order.

\*\*\*\*\*

**4.803.41** Notifying a Household of an IPV Administrative Disqualification Hearing [Rev. eff. 1/1/16]

- A. The Administrative Law Judge or local-level hearing officer shall provide written notice to the household member suspected of intentional program violation at least thirty (30) calendar days in advance of the date an administrative disqualification hearing initiated by the local office has been scheduled.
- B. The notice shall be mailed Certified Mail, Return Receipt Requested, or by first class mail or the notice may be served on the individual by any other reliable method, such as personal delivery by a Food Assistance worker or other employee, affidavit of service, Federal Express, etc. If no proof of receipt is obtained, a statement of non-receipt by the household member shall be considered good cause for not appearing at the hearing. The notice shall contain at a minimum:
1. The date, time, and place of the hearing;
  2. The charge(s) against the household member;
  3. A summary of the evidence and how and where the evidence can be examined;
  4. A warning that the decision will be based solely on information provided by the local office if the household member fails to appear at the hearing;
  5. A statement that the household member or representative will have ten (10) calendar days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;
  6. A warning that the disqualification penalties for fraud under the Food Assistance Program that could be imposed and a statement of which penalty the hearing officer believes is applicable to the case scheduled for hearing. The disqualification penalties for fraud are as follows:
    - a. Twelve month disqualification for the first (1<sup>st</sup>) violation, twenty-four month



disqualification for the second (2<sup>nd</sup>) violation, and permanently for the third (3<sup>rd</sup>) violation, except as provided for in paragraphs b, c, d, and e, of this section;

b. Individuals found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of ten (10) years, except if the client has received his/her 3<sup>rd</sup> violation. In such cases, the individual shall be disqualified permanently.

c. Individuals found by a federal, state or local court to have used or received benefits in a transaction involving the sale of a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)) shall be ineligible to participate in the program:

- 1) For a period of twenty four months upon the first occasion of such violation; and,
- 2) Permanently upon the second occasion of such violation.

Copies of the Section 102 of the Controlled Substances Act (21 U.S.C. 802), as amended, is available for inspection during normal business hours or by contacting: Director, Food Assistance Programs Division, Colorado Department of Human Services, 1575 Sherman Street, Denver, Colorado 80203; or a state publications depository library. No further amendments or editions are incorporated.

d. Individuals found by a federal, state or local court to have used or received benefits in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the program upon the first occasion of such violation.

e. An individual convicted by a federal, state or local court of having trafficked benefits for an aggregate amount of five hundred dollars (\$500) or more shall be permanently ineligible to participate in the program upon the first occasion of such violation.

f. The penalties in paragraphs c and d of this section shall also apply in cases of deferred adjudication as described in Section 4.804, where the court makes a finding that the individual engaged in the conduct described in paragraph c and d, of this section.

g. If a court fails to impose a disqualification or a disqualification period for any intentional program violation, the state agency shall impose the appropriate disqualification penalty specified within this section, unless it is contrary to the court order.

7. A statement of which penalty the hearing officer believes is applicable to the case scheduled for the hearing. ~~See Section 4.803.3 for the types of disqualifications and appropriate penalties associated with intentional program violations.~~

8. A statement that the hearing does not preclude the state or federal government from prosecuting the household member for fraud in a civil or criminal court action or from collecting the over-issuance.

9. The name and telephone number of the agency that the individual can call to obtain free legal advice.

10. For county departments conducting local-level ADH, the notice shall inform the client that he/she may request to have a state-level ADH rather than a local-level ADH.

- C. A copy of the local-level hearing procedures, and the demand letter for over-issuance (if not sent previously) shall be attached to the thirty (30) day advance notice for the local-level hearing. The Administrative Law Judge shall provide a copy of the state hearing procedures with the thirty (30) day advance notice.
- D. The Administrative Law Judge shall not enter a default against the household member for failure to file a written answer to the notice of hearing but shall base the initial decision upon the evidence introduced at the hearing.

\*\*\*\*\*

#### **4.803.44** Administrative Disqualification Hearing Procedures

- A. At the administrative disqualification hearing, the Administrative Law Judge (ALJ) or local hearing officer shall advise the household member or representative that he or she may refuse to answer questions during the hearing.
- B. A hearing decision and notification to the parties shall occur within ninety (90) calendar days from the date the household member is notified in writing that a state or local-level hearing requested by the local office has been scheduled.
- C. Following the conclusion of the hearing at the state-level, the ALJ shall prepare and issue an initial decision that shall contain a determination of whether the county or State Department acted in accordance with, and properly interpreted the rules and regulations of the State Department. For the purpose of the decision, material issues of law shall be defined. The ALJ has no jurisdiction or authority to determine issues of constitutionality or legality of departmental rules or regulations. This decision is prepared and filed with the Colorado Department of Human Services for service to each party.

In the case of a hearing before the Administrative Law Judge (ALJ), this determination shall be an initial decision to be reviewed by the Office of Appeals pursuant to ~~Section 4.802.63, D.~~ The initial decision shall not be implemented pending review by the Office of Appeals and entry of a final agency decision. The initial decision shall advise the household that failure to file exceptions to provisions of the initial decision will waive the right to seek judicial review of a final agency decision affirming those provisions.

- D. A local-level hearing officer shall meet the ninety (90) calendar day timeframe, issue the decision to the client, and forward a copy to the Colorado Department of Human Services, Food Assistance Division.
- E. The household member or his/her representative is entitled to a postponement of up to thirty (30) calendar days if the request for postponement is made at least ten (10) calendar days prior to the scheduled hearing date, unless good cause can be shown for failure to request postponement within the required timeframe. If the hearing is postponed, the above limits shall be extended for as many days as the hearing is postponed.
- F. The local office shall make the hearing procedures in this staff manual available to any interested party.
- G. A verbatim transcript or recording of testimony and exhibits shall be made. This transcript or recording together with all papers and requests filed in the proceeding shall be retained by the local office for a period of three (3) years from the initiation of the action and shall be available to the household or its representatives during business hours for copying and inspection.

\*\*\*\*\*

\*\*\*\*\*

#### **4.803.5 Local-Level IPV Hearings [Rev. eff. 1/1/16]**

##### **A. Local-Level Hearing Official**

1. The individual who acts as a local-level hearing officer for the local office shall meet the following requirements:
  - a. He/she shall be an impartial individual who does not have a personal stake or involvement in the case;
  - b. He/she cannot have been directly involved in the initial determination of the action which is being contested and was not the immediate supervisor of the eligibility worker who initiated the intentional program violation action;
  - c. The individual shall be:
    1. An employee of the county; or
    2. An individual under contract with the county; or,
    3. An employee of another public agency, statutory board or other legal entity designated by the county to conduct hearings.
2. The individual who acts as a local-level hearing officer is required to carefully consider the evidence and determine, based on clear and convincing evidence, if the individual intended to commit an intentional program violation ~~as outlined in Section 4.803.2.~~

##### **B. Notice of Local-Level Hearing Decision**

1. If the local-level administrative disqualification hearing finds the household member did not commit an intentional program violation, the local-level hearing officer shall provide a written notice that informs the household, the local office, and the State Food Assistance Programs Division of the decision.
2. The decision shall contain the reasons for the hearing officer's decision and a response to client presented arguments and identify the evidence presented by both client and the local office.
3. If a local-level hearing officer determines that an intentional program violation occurred, the household shall be notified in accordance with Section 4.803.7, and accompanying the decision shall be an Appeal Request for the household to appeal the decision to a state-level administrative disqualification hearing.
4. If mailed, the notice shall be sent by either first class mail or certified mail (return receipt requested), or the notice may be served on the individual(s) by any other reliable method. If no proof of receipt is obtained, a statement of non-receipt by the household member shall be considered good cause for not appearing at the hearing.
5. A copy of the local-level hearing decision shall be forwarded to the State Food Assistance Programs Division for review at the same time the decision is mailed to the client.

##### **C. Appeal of Local-Level Decision**

1. The household may appeal the decision of the local-level administrative disqualification hearing to the Office of Administrative Courts. An appeal must be received by the local office or by the Office of Administrative Courts within fifteen (15)

calendar days of the date of household receipt of the local-level decision. The household shall be allowed to participate as described in Section 4.803.44.

2. If the household member appeals a local-level hearing to a state-level hearing, the Office of Administrative Courts shall provide a written notice to that household member at least ten (10) calendar days in advance of the scheduled hearing. The ten (10) calendar day advance notice shall contain at a minimum:
  - a. The date, time, and place of the hearing.
  - b. A statement that the Office of Administrative Courts will dismiss the hearing request and the household member will be disqualified in accordance with the local hearing decision if the household member or its representative fails to appear for the hearing without good cause.
  - c. A statement that the hearing does not preclude civil or criminal prosecution, or from collecting the over-issuance.
  - d. A listing of the household members' rights.
  - e. A copy of the Office of Administrative Courts hearing procedures shall be attached to the ten (10) calendar day advance notice.
3. If the household member fails to appear for the administrative disqualification hearing appeal, the Office of Administrative Courts (OAC) shall dismiss the hearing request. The Administrative Law Judge shall promptly serve copies of the order on the household member and the local office. The order shall inform the household member that he/she will continue to be disqualified in accordance with the local-level hearing decision. The household member will be afforded a ten (10) calendar day period from the date the order of dismissal was mailed to explain in a letter to the OAC the reason for failing to appear. If the OAC determines that the household member or its representative has good cause for not appearing, the Administrative Law Judge shall reschedule another hearing date.

If the appellant does not submit a letter seeking to show good cause within the ten (10) calendar day period, the order of dismissal shall be filed with the Office of Appeals of the State Department. The Office of Appeals shall confirm the dismissal of the appeal by an agency decision, which shall be served on the parties and the interested Division of the State Department. Within three (3) working days after the effective date of the decision, the local office shall implement necessary actions to provide benefits in the correct amount, to terminate benefits, to recover benefits incorrectly paid, and/or other appropriate actions in accordance with the rules. If the appellant submits a letter seeking to show good cause and the Administrative Law Judge (ALJ) finds that the stated facts do not constitute good cause, the ALJ shall enter an initial decision confirming the dismissal. The appellant may file exceptions to the initial decision pursuant to Section 4.802.63, D.

\*\*\*\*\*

#### 4.804.1 Disqualification Consent Agreement [Rev. eff. 1/1/16]

##### A. Criteria for Consent Agreement

If county prosecutors pursue a consent agreement, the agreement shall provide the household advance notification of the consequences of consenting to the disqualification. The consent agreement shall contain the following:

1. A statement for the accused individual to sign that he or she understands

the consequences of consenting to disqualification.

2. A signature block for the accused individual.
3. A statement that the head of household must also sign the consent agreement if the accused individual is not the head of household.
4. A signature block for the head of household.
5. A statement that consenting to disqualification will result in disqualification and a reduction in benefits for the period of disqualification, even though the accused individual was not found guilty of civil or criminal misrepresentation or fraud.
6. A warning that the disqualification penalties for fraud under the Food Assistance Program that could be imposed and a statement of which penalty the hearing office believes is applicable to the case scheduled for the hearing. ~~See Section 4.803.2, F, for the fraud disqualification penalties.~~
7. A statement of the fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim, unless the accused individual has already repaid the claim as a result of meeting the terms of the agreement with the prosecutor or the court order.

B. Imposing Disqualifications When Consent Agreements are Obtained

1. If the household member suspected of fraud signs the disqualification consent agreement, the household member shall be disqualified in accordance with the disqualification periods specified in Section 4.803.2, F, unless contrary to the court order.
2. Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed, regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the over-issuance that resulted from the disqualified member's suspected fraudulent act, regardless of its eligibility for Program benefits.

C. Notification to Household of Disqualification

1. If the household member suspected of fraud signs the disqualification consent agreement, the local office shall provide written notice to the household member. The notice shall be provided prior to disqualification. The notice shall inform the household member of the disqualification and the date the disqualification will take effect.
2. The local office shall also provide to the remaining household members, if any, the allotment they will receive during the period of disqualification or notice that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in Section 4.411.1.

\*\*\*\*\*

# Notice of Proposed Rulemaking

**Tracking number**

2018-00569

**Department**

500,1008,2500 - Department of Human Services

**Agency**

2506 - Food Assistance Program (Volume 4B)

**CCR number**

10 CCR 2506-1

**Rule title**

RULE MANUAL VOLUME 4B, FOOD ASSISTANCE

## Rulemaking Hearing

**Date**

12/07/2018

**Time**

08:30 AM

**Location**

1575 Sherman Street

**Subjects and issues involved**

The United States Department of Agriculture, Food and Nutrition Service annually evaluates Federal income poverty guidelines and cost of living increases to determine appropriate adjustments to income eligibility standards, benefit allotments, and deductions for the upcoming Federal Fiscal Year. The modified figures are typically made available to states during the month of August immediately proceeding the next fiscal year.

**Statutory authority**

26-1-107, C.R.S. (2015)  
26-1-109, C.R.S. (2015)  
26-1-111, C.R.S. (2015)  
26-2-301 (2017), C.R.S.  
26-2-302 (2017), C.R.S.  
Agricultural Act of 2014 (Public Law 113-79)  
7 CFR 273.8(b)  
7 CFR 273.9(a)  
7 CFR 273.9(d)(1)(i)

## Contact information

**Name**

Teri Chasten

**Title**

Rule Author

**Telephone**

303-866-5813

**Email**

teri.chasten@state.co.us

**Title of Proposed Rule: Food Assistance FFY19 Standard Utility Allowance Updates and Cost of Living Adjustments**

**CDHS Tracking #: 18-08-08-01**

Office, Division, & Program: Rule Author: Teri Chasten  
OES, FEA, Food Assistance

Phone: 303-866-5813

E-Mail:  
teri.chasten@state.co.us

**RULEMAKING PACKET**

**Type of Rule:** *(complete a and b, below)*

a. ☒ Board ☐ Executive Director

b. ☒ Regular ☐ Emergency

**This package is submitted to State Board Administration as:** *(check all that apply)*

☐ AG Initial Review

☐ Initial Board Reading

☐ AG 2<sup>nd</sup> Review

☒ Second Board Reading / Adoption

**This package contains the following types of rules:** *(check all that apply)*

Number

9 Amended Rules

       New Rules

       Repealed Rules

       Reviewed Rules

What month is being requested for this rule to first go before the State Board?	September 2018
---	----------------

What date is being requested for this rule to be effective?	October 1, 2018
---	-----------------

Is this date legislatively required?	
--------------------------------------	--

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

**Office Director Approval:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION**

Comments:

Estimated Dates:	1st Board	9/7/2018	2nd Board	11/2/19	Effective Date	10/1/2018
		_____		_____		_____

**Title of Proposed Rule: Food Assistance FFY19 Standard Utility Allowance Updates and Cost of Living Adjustments**

**CDHS Tracking #: 18-08-08-01**

Office, Division, & Program: Rule Author: Teri Chasten  
OES, FEA, Food Assistance

Phone: 303-866-5813

E-Mail:  
teri.chasten@state.co.us

**STATEMENT OF BASIS AND PURPOSE**

**Summary of the basis and purpose for new rule or rule change.**

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. **1500 Char max***

The United States Department of Agriculture, Food and Nutrition Service annually evaluates Federal income poverty guidelines and cost of living increases to determine appropriate adjustments to income eligibility standards, benefit allotments, and deductions for the upcoming Federal Fiscal Year. The modified figures are typically made available to states during the month of August immediately preceding the next fiscal year.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

- ☒ to comply with state/federal law and/or  
☐ to preserve public health, safety and welfare

Justification for emergency:

Each year, FNS disseminates the new standards to states for use in the upcoming federal fiscal year. The COLA adjustments will not be made available until August 2018.

**State Board Authority for Rule:**

Code	Description
26-1-107, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities.

**Program Authority for Rule:** *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
26-2-301 (2017), C.R.S.	Designates the Colorado Department of Human Services as the responsible agency to administer the Food Assistance Program in the State of Colorado.
26-2-302 (2017), C.R.S.	Prohibits any interference that would prevent the Colorado Department of Human Services from complying with federal mandates prescribed under the federal "Food Stamp Act" as amended.
Agricultural Act of 2014 (Public Law 113-79)	Federal program authority
7 CFR 273.8(b)	Outlines resource standards
7 CFR 273.9(a)	Outlines the income eligibility thresholds
7 CFR 273.9(d)(1)(i)	Outlines the standard deduction
7 CFR 273.9(d)(6)(iii)	Outlines the standard utility allowances
7 CFR 273.10(e)(4)(i)	Outlines the maximum food assistance allotment levels
7 CFR 273.10(e)(2)(ii)(c)	Outlines the minimum food assistance allotment levels for eligible one and two person households



**Title of Proposed Rule: Food Assistance FFY19 Standard Utility Allowance Updates and Cost of Living Adjustments**

**CDHS Tracking #:** 18-08-08-01

Office, Division, & Program: Rule Author: Teri Chasten  
OES, FEA, Food Assistance

Phone: 303-866-5813

E-Mail:  
teri.chasten@state.co.us

7 CFR 273.12(e)	Outlines mass changes
7 CFR 273.9(D)(6)(ii)	Outlines the maximum shelter deduction

Does the rule incorporate material by reference?

☐

Yes

☒

No

Does this rule repeat language found in statute?

☐

Yes

☒

No

If yes, please explain.

**Title of Proposed Rule: Food Assistance FFY19 Standard Utility Allowance Updates and Cost of Living Adjustments**

**CDHS Tracking #: 18-08-08-01**

Office, Division, & Program: Rule Author: Teri Chasten  
OES, FEA, Food Assistance

Phone: 303-866-5813

E-Mail:  
teri.chasten@state.co.us

**REGULATORY ANALYSIS**

**1. List of groups impacted by this rule.**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

Increases to income eligibility thresholds, standard deductions, and allowable shelter expenses will benefit all Food Assistance applicants and participants.

**2. Describe the qualitative and quantitative impact.**

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

Adjustments to the four-tiered standard utility allowance (SUA), standard deduction, maximum allotments, and income threshold guidelines have the potential to increase current benefit amounts for participants and increase program accessibility for future applicants.

**3. Fiscal Impact**

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just "no impact" answer should include "no impact because...."***

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

There is no impact because the costs associated with the Colorado Benefits Management System to incorporate these changes have already been allocated in the system maintenance budget.

County Fiscal Impact

There are no county fiscal impacts associated with this rule change.

Federal Fiscal Impact

There are no federal fiscal impacts associated with this rule change.

Other Fiscal Impact (such as providers, local governments, etc.)

There are no other fiscal impacts associated with this rule change.

**4. Data Description**

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

Federal memorandums from the Food and Nutrition Services as well as data from the Consumer Price Index for all Urban Consumers were used in the development of this rule.

**5. Alternatives to this Rule-making**

**Title of Proposed Rule:** Food Assistance FFY19 Standard Utility Allowance Updates and Cost of Living Adjustments

**CDHS Tracking #:** 18-08-08-01

Office, Division, & Program: Rule Author: Teri Chasten  
OES, FEA, Food Assistance

Phone: 303-866-5813

E-Mail:  
teri.chasten@state.co.us

*Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just “no alternative” answer should include “no alternative because...”*

As this is a Federal mandate, there are no available alternatives that exist to incorporate these program changes state-wide.

**Title of Proposed Rule: Food Assistance FFY19 Standard Utility Allowance Updates and Cost of Living Adjustments**

**CDHS Tracking #: 18-08-08-01**

Office, Division, & Program: Rule Author: Teri Chasten  
OES, FEA, Food Assistance

Phone: 303-866-5813

E-Mail:  
teri.chasten@state.co.us

**OVERVIEW OF PROPOSED RULE**

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language				New Language or Response				Reason / Example / Best Practice	Public Comment No / Detail
7.000	Incorrect Statutory Reference	Section 26.5.103 C.R.S.				Section 26.5-101(3) C.R.S.					
4.207.3,D	Outdated information	Household Size		Maximum Monthly Allotment Effective October 1, 2017		Household Size		Maximum Monthly Allotment Effective October 1, 2018		The maximum monthly Food Assistance benefit allotments and the minimum allotment for households are represented in table form. The effective date needs to be updated to reflect the current year.	
		1		\$192		1		\$192			
		2		\$352		2		\$353			
		3		\$504		3		\$505			
		4		\$640		4		\$642			
		5		\$760		5		\$762			
		6		\$913		6		\$914			
		7		\$1,009		7		\$1,011			
		8		\$1,153		8		\$1,155			
		Each Additional Person		+\$144		Each Additional Person		\$144			
Household Size		Minimum Monthly Allotment Effective October 1, 2017		Household Size		Minimum Monthly Allotment Effective October 1, 2018					
1-2		\$15		1-2		\$15					
4.401.1,B	Outdated information	Effective October 1, 2017, the gross income level for one hundred thirty percent (130%), two hundred percent (200%), and one hundred sixty-five percent (165%) of the federal poverty level for the corresponding household size is as follows:				Effective October 1, 2018, the gross income level for one hundred thirty percent (130%), two hundred percent (200%), and one hundred sixty-five percent (165%) of the federal poverty level for the corresponding household size is as follows:				The gross income limits for households subject to income thresholds for 130%, 165%, and 200% of the Federal Poverty Level (FPL) are represented in table form.	
		Household Size	130% Gross Income Level	200% Gross Income Level	165% Gross Income Level	Household Size	130% Gross Income Level	200% Gross Income Level	165% Gross Income Level		

**Title of Proposed Rule: Food Assistance FFY19 Standard Utility Allowance Updates and Cost of Living Adjustments**

**CDHS Tracking #: 18-08-08-01**

Office, Division, & Program: Rule Author: Teri Chasten  
OES, FEA, Food Assistance

Phone: 303-866-5813

E-Mail:  
teri.chasten@state.co.us

		<table><tr><td>1</td><td>\$1,307</td><td>\$2,010</td><td>\$1,659</td></tr><tr><td>2</td><td>\$1,760</td><td>\$2,708</td><td>\$2,233</td></tr><tr><td>3</td><td>\$2,213</td><td>\$3,404</td><td>\$2,808</td></tr><tr><td>4</td><td>\$2,665</td><td>\$4,100</td><td>\$3,383</td></tr><tr><td>5</td><td>\$3,118</td><td>\$4,798</td><td>\$3,958</td></tr><tr><td>6</td><td>\$3,571</td><td>\$5,494</td><td>\$4,532</td></tr><tr><td>7</td><td>\$4,024</td><td>\$6,190</td><td>\$5,107</td></tr><tr><td>8</td><td>\$4,477</td><td>\$6,888</td><td>\$5,682</td></tr><tr><td>Each additional person</td><td>+\$453</td><td>+\$698</td><td>+\$575</td></tr></table>	1	\$1,307	\$2,010	\$1,659	2	\$1,760	\$2,708	\$2,233	3	\$2,213	\$3,404	\$2,808	4	\$2,665	\$4,100	\$3,383	5	\$3,118	\$4,798	\$3,958	6	\$3,571	\$5,494	\$4,532	7	\$4,024	\$6,190	\$5,107	8	\$4,477	\$6,888	\$5,682	Each additional person	+\$453	+\$698	+\$575	<table><tr><td>1</td><td>\$1,316</td><td>\$2,024</td><td>\$1,670</td></tr><tr><td>2</td><td>\$1,784</td><td>\$2,744</td><td>\$2,264</td></tr><tr><td>3</td><td>\$2,252</td><td>\$3,464</td><td>\$2,858</td></tr><tr><td>4</td><td>\$2,720</td><td>\$4,184</td><td>\$3,452</td></tr><tr><td>5</td><td>\$3,188</td><td>\$4,904</td><td>\$4,046</td></tr><tr><td>6</td><td>\$3,656</td><td>\$5,624</td><td>\$4,640</td></tr><tr><td>7</td><td>\$4,124</td><td>\$6,344</td><td>\$5,234</td></tr><tr><td>8</td><td>\$4,592</td><td>\$7,064</td><td>\$5,828</td></tr><tr><td>Each additional person</td><td>+\$468</td><td>+\$720</td><td>+\$594</td></tr></table>	1	\$1,316	\$2,024	\$1,670	2	\$1,784	\$2,744	\$2,264	3	\$2,252	\$3,464	\$2,858	4	\$2,720	\$4,184	\$3,452	5	\$3,188	\$4,904	\$4,046	6	\$3,656	\$5,624	\$4,640	7	\$4,124	\$6,344	\$5,234	8	\$4,592	\$7,064	\$5,828	Each additional person	+\$468	+\$720	+\$594		
1	\$1,307	\$2,010	\$1,659																																																																										
2	\$1,760	\$2,708	\$2,233																																																																										
3	\$2,213	\$3,404	\$2,808																																																																										
4	\$2,665	\$4,100	\$3,383																																																																										
5	\$3,118	\$4,798	\$3,958																																																																										
6	\$3,571	\$5,494	\$4,532																																																																										
7	\$4,024	\$6,190	\$5,107																																																																										
8	\$4,477	\$6,888	\$5,682																																																																										
Each additional person	+\$453	+\$698	+\$575																																																																										
1	\$1,316	\$2,024	\$1,670																																																																										
2	\$1,784	\$2,744	\$2,264																																																																										
3	\$2,252	\$3,464	\$2,858																																																																										
4	\$2,720	\$4,184	\$3,452																																																																										
5	\$3,188	\$4,904	\$4,046																																																																										
6	\$3,656	\$5,624	\$4,640																																																																										
7	\$4,124	\$6,344	\$5,234																																																																										
8	\$4,592	\$7,064	\$5,828																																																																										
Each additional person	+\$468	+\$720	+\$594																																																																										
4.401.2,D	Outdated information	<p>Effective October 1, 2017, the net income level of one hundred percent (100%) of the federal poverty level for the corresponding household size is as follows:</p> <table><tr><th>Household Size</th><th>100% Net Income Level</th></tr><tr><td>1</td><td>\$1,005</td></tr><tr><td>2</td><td>\$1,354</td></tr><tr><td>3</td><td>\$1,702</td></tr><tr><td>4</td><td>\$2,050</td></tr><tr><td>5</td><td>\$2,399</td></tr><tr><td>6</td><td>\$2,747</td></tr><tr><td>7</td><td>\$3,095</td></tr><tr><td>8</td><td>\$3,444</td></tr><tr><td>Each Additional Person</td><td>+\$349</td></tr></table>	Household Size	100% Net Income Level	1	\$1,005	2	\$1,354	3	\$1,702	4	\$2,050	5	\$2,399	6	\$2,747	7	\$3,095	8	\$3,444	Each Additional Person	+\$349	<p>Effective October 1, 2018, the net income level of one hundred percent (100%) of the federal poverty level for the corresponding household size is as follows:</p> <table><tr><th>Household Size</th><th>100% Net Income Level</th></tr><tr><td>1</td><td>\$1,012</td></tr><tr><td>2</td><td>\$1,372</td></tr><tr><td>3</td><td>\$1,732</td></tr><tr><td>4</td><td>\$2,092</td></tr><tr><td>5</td><td>\$2,452</td></tr><tr><td>6</td><td>\$2,812</td></tr><tr><td>7</td><td>\$3,172</td></tr><tr><td>8</td><td>\$3,532</td></tr><tr><td>Each Additional Person</td><td>+\$360</td></tr></table>	Household Size	100% Net Income Level	1	\$1,012	2	\$1,372	3	\$1,732	4	\$2,092	5	\$2,452	6	\$2,812	7	\$3,172	8	\$3,532	Each Additional Person	+\$360	The net income limits reflecting 100% of the Federal Poverty Level (FPL) are represented in table form as applicable to each household size.																																	
Household Size	100% Net Income Level																																																																												
1	\$1,005																																																																												
2	\$1,354																																																																												
3	\$1,702																																																																												
4	\$2,050																																																																												
5	\$2,399																																																																												
6	\$2,747																																																																												
7	\$3,095																																																																												
8	\$3,444																																																																												
Each Additional Person	+\$349																																																																												
Household Size	100% Net Income Level																																																																												
1	\$1,012																																																																												
2	\$1,372																																																																												
3	\$1,732																																																																												
4	\$2,092																																																																												
5	\$2,452																																																																												
6	\$2,812																																																																												
7	\$3,172																																																																												
8	\$3,532																																																																												
Each Additional Person	+\$360																																																																												
4.407.1	Outdated information	<table><tr><th colspan="5">Standard Deduction Amount</th></tr><tr><td>Household Size</td><td>1-3</td><td>4</td><td>5</td><td>6+</td></tr><tr><td>Effective October 1, 2017</td><td>\$160</td><td>\$170</td><td>\$199</td><td>\$228</td></tr></table>	Standard Deduction Amount					Household Size	1-3	4	5	6+	Effective October 1, 2017	\$160	\$170	\$199	\$228	<table><tr><th colspan="5">Standard Deduction Amount</th></tr><tr><td>Household Size</td><td>1-3</td><td>4</td><td>5</td><td>6+</td></tr><tr><td>Effective October 1, 2018</td><td>\$164</td><td>\$174</td><td>\$204</td><td>\$234</td></tr></table>	Standard Deduction Amount					Household Size	1-3	4	5	6+	Effective October 1, 2018	\$164	\$174	\$204	\$234	The standard deduction amount of 8.31% of the Federal Poverty Level (FPL) is automatically granted to all Food Assistance participants and is displayed in rule in table form.																																											
Standard Deduction Amount																																																																													
Household Size	1-3	4	5	6+																																																																									
Effective October 1, 2017	\$160	\$170	\$199	\$228																																																																									
Standard Deduction Amount																																																																													
Household Size	1-3	4	5	6+																																																																									
Effective October 1, 2018	\$164	\$174	\$204	\$234																																																																									
4.407.3, B	Outdated information	<table><tr><th colspan="2">Shelter Deduction Cap</th></tr><tr><td>Effective October 1, 2017</td><td>\$535</td></tr></table>	Shelter Deduction Cap		Effective October 1, 2017	\$535	<table><tr><th colspan="2">Shelter Deduction Cap</th></tr><tr><td>Effective October 1, 2018</td><td>\$552</td></tr></table>	Shelter Deduction Cap		Effective October 1, 2018	\$552	Participant households are granted a shelter expense deduction for shelter costs in excess of																																																																	
Shelter Deduction Cap																																																																													
Effective October 1, 2017	\$535																																																																												
Shelter Deduction Cap																																																																													
Effective October 1, 2018	\$552																																																																												

**Title of Proposed Rule: Food Assistance FFY19 Standard Utility Allowance Updates and Cost of Living Adjustments**

**CDHS Tracking #:** 18-08-08-01

Office, Division, & Program: Rule Author: Teri Chasten  
OES, FEA, Food Assistance

Phone: 303-866-5813

E-Mail:  
teri.chasten@state.co.us

				50% of the household's total monthly income (minus all other applicable deductions). A cap is applied to the maximum amount for this deduction for households that do not contain a member who is considered elderly or disabled.					
4.407.31, A, 4	Outdated information	<div>The HCUA standard is as follows:</div> <table><tr><td>Effective October 1, 2017</td><td>\$469</td></tr></table>	Effective October 1, 2017	\$469	<div>The HCUA standard is as follows:</div> <table><tr><td>Effective October 1, 2018</td><td>\$476</td></tr></table>	Effective October 1, 2018	\$476	The heating and cooling utility allowance (HCUA) is a standard utility deduction afforded to households who are responsible for paying heating and or cooling costs.	
Effective October 1, 2017	\$469								
Effective October 1, 2018	\$476								
4.407.31, B, 3	Outdated information	<div>The BUA standard is as follows:</div> <table><tr><td>Effective October 1, 2017</td><td>\$298</td></tr></table>	Effective October 1, 2017	\$298	<div>The BUA standard is as follows:</div> <table><tr><td>Effective October 1, 2018</td><td>\$304</td></tr></table>	Effective October 1, 2018	\$304	The basic utility allowance (BUA) is a standard utility deduction afforded to households who are responsible for paying at least 2 non-heating or cooling utility costs.	
Effective October 1, 2017	\$298								
Effective October 1, 2018	\$304								
4.407.31, C, 3	Outdated information	<div>The OUA standard is as follows:</div> <table><tr><td>Effective October 1, 2017</td><td>\$56</td></tr></table>	Effective October 1, 2017	\$56	<div>The OUA standard is as follows:</div> <table><tr><td>Effective October 1, 2018</td><td>\$57</td></tr></table>	Effective October 1, 2018	\$57	The one utility allowance (OUA) is a standard utility deduction afforded to households who are responsible for paying just one non-heating/cooling or phone utility cost.	
Effective October 1, 2017	\$56								
Effective October 1, 2018	\$57								
4.407.31, D, 2	Outdated information	<div>The telephone allowance is as follows:</div> <table><tr><td>Effective October 1, 2017</td><td>\$76</td></tr></table>	Effective October 1, 2017	\$76	<div>The telephone allowance is as follows:</div> <table><tr><td>Effective October 1, 2018</td><td>\$78</td></tr></table>	Effective October 1, 2018	\$78	The telephone allowance is a standard utility deduction afforded to households who are responsible for paying a telephone utility cost and no other utilities.	
Effective October 1, 2017	\$76								
Effective October 1, 2018	\$78								

**Title of Proposed Rule:** Food Assistance FFY19 Standard Utility Allowance Updates and  
Cost of Living Adjustments

---

**CDHS Tracking #:** 18-08-08-01

---

Office, Division, & Program: Rule Author: Teri Chasten  
OES, FEA, Food Assistance

Phone: 303-866-5813

---

E-Mail:  
teri.chasten@state.co.us

---

**Title of Proposed Rule: Food Assistance FFY19 Standard Utility Allowance Updates and Cost of Living Adjustments**

**CDHS Tracking #: 18-08-08-01**

Office, Division, & Program: Rule Author: Teri Chasten  
OES, FEA, Food Assistance

Phone: 303-866-5813

E-Mail:  
teri.chasten@state.co.us

**STAKEHOLDER COMMENT SUMMARY**

**Development**

*The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):*

--

**This Rule-Making Package**

*The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:*

--

**Other State Agencies**

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

☐ Yes ☐ No

If yes, who was contacted and what was their input?

--

**Sub-PAC**

Have these rules been reviewed by the appropriate Sub-PAC Committee?

☐ Yes ☐ No

Name of Sub-PAC			
Date presented			
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.			

**PAC**

Have these rules been approved by PAC?

☐ Yes ☐ No

Date presented			
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.			

**Other Comments**

Comments were received from stakeholders on the proposed rules:

☐ Yes ☐ No



**Title of Proposed Rule:** Food Assistance FFY19 Standard Utility Allowance Updates and Cost of Living Adjustments

---

**CDHS Tracking #:** 18-08-08-01

---

Office, Division, & Program: Rule Author: Teri Chasten  
OES, FEA, Food Assistance

Phone: 303-866-5813

---

E-Mail:  
teri.chasten@state.co.us

---

*If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.*

## (10 CCR 2506-1)

### 4.207.3 Benefit Allotment

- A. After eligibility has been established, the monthly Food Assistance benefit allotment will be determined. The state automated system will compute the household's allotment. The following formula shall be used to determine a household's benefit allotment.
1. Multiply the net monthly income by thirty percent (30%).
  2. Round the product down to the next whole dollar if it ends in one (1) through ninety-nine (99) cents.
  3. Subtract the result from the maximum benefit allowed for the appropriate household size, as shown in D below.
- B. If the calculation of benefits for an initial month yields an allotment of less than the federal minimum allotment referenced in 4.207.3, D, no benefits shall be issued to the household for the initial month.

For eligible households that are entitled to no benefits in their initial month of application, but are entitled to benefits in subsequent months, the county department shall certify the household for a certification period beginning with the month of application.

Except for households that are eligible under basic or expanded categorical eligibility, households with three or more members who are entitled to zero benefits shall have their Food Assistance application denied. This provision does not apply if zero benefits are due to the pro-ration requirements or due to the initial month's allotment being less than the federal minimum allotment referenced in 4.207.3,D.

- C. Except for an initial month, if the allotment for a one- or two-person household is less than the federal minimum allotment referenced in 4.207.3, D, round the allotment up to the minimum benefit allowed for a one- or two-person household.
- D. The Food Assistance maximum and minimum monthly benefit allotment tables will be adjusted as announced by the United States Department of Agriculture (USDA, Food and Nutrition Service (FNS)).

HOUSEHOLD SIZE	MAXIMUM MONTHLY ALLOTMENT EFFECTIVE OCTOBER 1, 2017-2018
1	\$192
2	<del>\$352</del> \$353
3	<del>\$504</del> \$505
4	<del>\$640</del> \$642
5	<del>\$760</del> \$762
6	<del>\$913</del> \$914
7	<del>\$1,009</del> \$1,011
8	<del>\$1,153</del> \$1,155
Each Additional Person	+ \$144

HOUSEHOLD SIZE	MINIMUM MONTHLY ALLOTMENT EFFECTIVE OCTOBER 1, 2017 2018
1-2	\$15

\*\*\*\*\*

#### 4.401.1 Gross Income Eligibility Determination

A household evaluated under standard eligibility rules may be eligible if its monthly nonexempt earned and unearned income does not exceed the gross income level. If after deducting any legally obligated child support payments and no other deductions, the household exceeds the gross income level there are no further computations required to consider the household's net income level. Instead, a Notice of Action form is completed to deny the household.

- A. The gross income level for households eligible under standard eligibility rules that do not include a member who is elderly and/or a person with a disability is one hundred thirty percent (130%) of the federal poverty level.
- B. Gross Income Levels Effective October 1, 2017, the gross income level for one hundred thirty percent (130%), two hundred percent (200%), and one hundred sixty-five percent (165%) of the federal poverty level for the corresponding household size is as follows:

Household Size	130% Gross Income Level	200% Gross Income Level	165% Gross Income Level
1	\$1,307 \$1,316	\$2,010 \$2,024	\$1,659 \$1,670
2	\$1,760 \$1,784	\$2,708 \$2,744	\$2,233 \$2,264
3	\$2,213 \$2,252	\$3,404 \$3,464	\$2,808 \$2,858
4	\$2,665 \$2,720	\$4,100 \$4,184	\$3,383 \$3,452
5	\$3,118 \$3,188	\$4,798 \$4,904	\$3,958 \$4,046
6	\$3,571 \$3,656	\$5,494 \$5,624	\$4,532 \$4,640
7	\$4,024 \$4,124	\$6,190 \$6,344	\$5,107 \$5,234
8	\$4,477 \$4,592	\$6,888 \$7,064	\$5,682 \$5,828
Each additional person	+\$453 \$468	+\$698 \$720	+\$575 \$594

\*\*\*\*\*

#### 4.401.2 Net Income Eligibility Determination

- A. Households evaluated under standard eligibility rules whose income does not exceed the gross income level as outlined in this section shall have their eligibility for benefits computed allowing the earned income, standard, dependent care, medical, and shelter deductions, as appropriate. The household shall be eligible only if its monthly gross income, less the allowable Food Assistance deductions, is below the maximum net eligibility level for their household size. A standard eligibility household that exceeds the net eligibility level must be denied.
- B. A standard eligibility household shall be eligible for Food Assistance benefits if its monthly nonexempt earned and unearned income, less all applicable deductions, including the earned income, standard, medical, dependent care, and unlimited excess shelter deduction, does not exceed the maximum net income level.
- C. If a household contains a member who is fifty-nine (59) years old on the date of application, but who will become sixty (60) years of age before the end of the month of application, the local office shall determine the household's eligibility as if the person is sixty (60) years of age.

D. Net Income Levels

Effective October 1, 2017 2018, the net income level of one hundred percent (100%) of the federal poverty level for the corresponding household size is as follows:

Household Size	100% Net Income Level
1	\$1,005 \$1,012
2	\$1,354 \$1,372
3	\$1,702 \$1,732
4	\$2,050 \$2,092
5	\$2,399 \$2,452
6	\$2,747 \$2,812
7	\$3,095 \$3,172
8	\$3,444 \$3,532
Each Additional Person	+\$349 \$360

\*\*\*\*\*

**4.407.1 Standard Deduction**

A standard deduction of 8.31% of the federal poverty income guidelines for the household size will be used to calculate the amount that is allowed to all households. The established standard amount will be adjusted annually as announced by the Food and Nutrition Service, USDA. The calculation of 8.31% of the federal poverty income guidelines for eligible members will be used for all households up to the household size of six (6). All households with six (6) or more eligible members will use the six (6) person standard deduction.

Standard Deduction Amount				
Household Size	1-3	4	5	6+
Effective October 1, 2017 2018	\$160 \$164	\$170 \$174	\$199 \$204	\$228 \$234

\*\*\*\*\*

**4.407.3 Excess Shelter Deduction**

- A. Households shall receive a deduction for the allowable monthly shelter costs that are in excess of fifty percent (50%) of the household's income after all other deductions. Shelter expenses are allowed as billed to a household member or as paid or billed to a disqualified individual. Shelter costs that are paid by or billed to a person disqualified for fraud shall be allowed as a deduction for eligible members in their entirety. Shelter costs, paid or billed to a person disqualified for being an ineligible non-citizen or for failure to provide a Social Security Number shall be divided evenly among all household members and the disqualified individual. All except the disqualified person's pro rata share is counted as a shelter cost of the household.
- B. A shelter deduction cap, as specified below, applies to households that do not contain person who is elderly and/or a person with a disability as defined in Section 4.304.41. Those households containing a person who is elderly and/or a person with a disability shall receive an excess shelter deduction for the monthly cost of shelter that exceeds fifty percent (50%) of the household's monthly income after all other applicable deductions.

SHELTER DEDUCTION CAP	
Effective October 1, 2017 2018	\$535 \$552

\*\*\*\*\*

**4.407.31 Four-Tiered Mandatory Standard Utility Allowance**

Effective October 1, 2008, a four tiered mandatory standard utility allowance deduction was implemented in determining a household's excess shelter deduction. Households cannot claim actual utility expenses and are only entitled to one of the four utility allowances. The four utility allowances shall be reviewed annually and adjusted each year, based on Federal approval, to reflect Colorado's cost of utilities. No utility expenses can be allowed as an income exclusion for self-employed households when a mandatory utility allowance is given to the household.

When determining expedited eligibility, the appropriate utility allowance shall be applied when establishing the household's shelter costs.

The four (4) tiers are as follows:

A. Heating and Cooling Utility Allowance (HCUA)

1. "Cooling costs" are defined as utility costs relating to the operation of air conditioning systems, room air conditioners, swamp coolers, or evaporative coolers. Fans are not an allowable cooling cost. A heating and cooling utility allowance (HCUA) is available only to households who:
  - a. Incur or anticipate heating or cooling costs separate and apart from their rent or mortgage;
  - b. Received a Low-Income Energy Assistance Program (LEAP) payment within the previous twelve (12) month period, regardless of whether or not the individual is still residing at the address for which he/she received the LEAP payment;
  - c. Live in private rental housing and are billed by their landlords on the basis of individual usage or are charged a flat rate separately from their rent for heating and cooling;
  - d. Share a residence and who incur at least a portion of the heating or cooling cost; each household will be entitled to the full HCUA; or,
  - e. Live in public housing and are responsible for excess heating and/or cooling costs.
2. A Food Assistance household, which incurs or anticipates a heating or cooling costs on an irregular basis, may continue to receive the HCUA between billing periods.
3. Operation of a space heater, electric blanket, heat lamp, cooking stove and the like when used as a supplemental heating source are allowable costs when determining eligibility for the basic utility allowance (BUA), but do not qualify a household for the HCUA.
4. The HCUA standard is as follows:

Effective October 1, 2017 2018	\$469 \$476
--------------------------------	-------------

B. Basic Utility Allowance (BUA)

1. The Basic Utility Allowance (BUA) is mandated for any households that are not entitled to the HCUA and that incur at least two (2) non-heating or non-cooling utility costs, such as electricity, water, sewer, trash, cooking fuel, or telephone.
2. If more than one assistance group shares in paying non-heating or non-cooling utility costs of the dwelling, the full BUA will be allowed for each assistance group sharing in the utility costs.

3. The BUA standard is as follows:

Effective October 1, 2017 2018	\$298 \$304
--------------------------------	-------------

C. One Utility Allowance (OUA)

1. The OUA is mandated for any household that is not entitled to the HCUA or BUA but is responsible for only one (1) non-heating or one (1) non-cooling utility expense. The OUA is not allowed if the household's only utility expense is a telephone.
2. If more than one (1) assistance group shares in paying one (1) non-heating or one non-cooling utility costs of the dwelling, the full OUA will be allowed for each assistance group sharing in the utility costs.
3. The OUA standard is as follows:

Effective October 1, 2017 2018	\$56 \$57
--------------------------------	-----------

D. Telephone Allowance

1. The telephone allowance is available to households whose only utility cost is for a telephone. If more than one assistance group shares in paying the telephone costs and that is the only utility costs of the dwelling, the full phone standard will be allowed for each assistance group sharing in the telephone costs.
2. The telephone allowance is as follows:

Effective October 1, 2017 2018	\$76 \$78
--------------------------------	-----------

\*\*\*\*\*

# Notice of Proposed Rulemaking

**Tracking number**

2018-00602

**Department**

500,1008,2500 - Department of Human Services

**Agency**

2509 - Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

**CCR number**

12 CCR 2509-2

**Rule title**

REFERRAL AND ASSESSMENT

## Rulemaking Hearing

**Date**

12/07/2018

**Time**

08:30 AM

**Location**

1575 Sherman Street

**Subjects and issues involved**

In 2012, the Child Fatality Review Team recommended that the Division of Child Welfare explore the implementation of a safety assessment tool for the Program Area 4 (PA4): Youth in Conflict - population. Additionally, counties and stakeholders expressed concerns that services being provided to the PA4 population lacked consistency between counties. This was largely due to a lack of rules implementing a minimum standard of practice for the PA4 population, which led children/youth to: (1) youth enter placement and cases opening without a caseworker ever meeting a parent in person or seeing the home; (2) youth remaining in care for extended periods of time; and (3) a lack of urgency in locating permanent placements for PA4 children/youth. These rules are intended to increase parent engagement, ensure that all families are assessed for safety and risk, and provide a minimum standard of practice in order to reduce unnecessary out of home placements by promoting the use of kin for out of home placements.

**Statutory authority**

26-1-107, C.R.S. (2015)  
26-1-109, C.R.S. (2015)  
26-1-111, C.R.S. (2015)  
26-1-111, C.R. S. (2015)

## Contact information

**Name**

Trevor Williams

**Title**

Rule Author

**Telephone**

303-866-4539

**Email**

trevor.williams@state.co.us

Title of Proposed Rule: **Program Area 4 Assessment Rules**

CDHS Tracking #: **18-09-28-01**

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

## RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

a. ☒ Board ☐ Executive Director

b. ☒ Regular ☐ Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

☒ AG Initial  
Review

☐ Initial Board  
Reading

☐ AG 2<sup>nd</sup> Review

☐ Second Board Reading  
/ Adoption

This package contains the following types of rules: *(check all that apply)*

Number

19 Amended Rules

3 New Rules

2 Repealed Rules

0 Reviewed Rules

What month is being requested for this rule to first go before the State Board?	1/2019
What date is being requested for this rule to be effective?	3/1/19
Is this date legislatively required?	no

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: \_\_\_\_\_ Date: \_\_\_\_\_

### REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Comments:

Estimated Dates: 1st Board \_\_\_\_\_ 2nd Board \_\_\_\_\_ Effective Date \_\_\_\_\_



**Title of Proposed Rule:** Program Area 4 Assessment Rules

**CDHS Tracking #:** 18-09-28-01

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

### STATEMENT OF BASIS AND PURPOSE

#### **Summary of the basis and purpose for new rule or rule change.**

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. **1500 Char max***

In 2012, the Child Fatality Review Team recommended that the Division of Child Welfare explore the implementation of a safety assessment tool for the Program Area 4 (PA4): Youth in Conflict - population. Additionally, counties and stakeholders expressed concerns that services being provided to the PA4 population lacked consistency between counties. This was largely due to a lack of rules implementing a minimum standard of practice for the PA4 population, which led children/youth to: (1) youth enter placement and cases opening without a caseworker ever meeting a parent in person or seeing the home; (2) youth remaining in care for extended periods of time; and (3) a lack of urgency in locating permanent placements for PA4 children/youth. These rules are intended to increase parent engagement, ensure that all families are assessed for safety and risk, and provide a minimum standard of practice in order to reduce unnecessary out of home placements by promoting the use of kin for out of home placements.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

- ☐ to comply with state/federal law and/or
- ☐ to preserve public health, safety and welfare

Justification for emergency:

#### **State Board Authority for Rule:**

Code	Description
26-1-107, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities

**Program Authority for Rule:** *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
26-1-111, C.R. S. (2015)	State department to promulgate rules for public assistance and welfare activities

Does the rule incorporate material by reference?  
Does this rule repeat language found in statute?

☐ Yes  
☐ Yes

☒ No  
☒ No

**Title of Proposed Rule:** Program Area 4 Assessment Rules

**CDHS Tracking #:** 18-09-28-01

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

If yes, please explain.

n/a

Title of Proposed Rule: **Program Area 4 Assessment Rules**

CDHS Tracking #: **18-09-28-01**

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

## **REGULATORY ANALYSIS**

### **1. List of groups impacted by this rule.**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

Children, youth and families in Colorado, along with county child welfare caseworkers, will benefit from this rule. The changes will ensure that families who become involved with child welfare due to issues perceived to be stemming from conflict between the parent and children/youth, are assessed for safety and risk, which will lead to more appropriate case planning and placement decisions at the initial stages of a case. Both the Child Fatality Review Team and the Federal Child and Family Services Review (CFSR) specifically noted that the lack of safety assessments in PA4 is a concern. While this may cause more work for intake caseworkers, these rules will increase the capacity of caseworkers to make informed decisions and more accurately assess the needs of the children, youth, and families who become involved with child welfare in Colorado.

### **2. Describe the qualitative and quantitative impact.**

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

The primary impact of this rule will be to ensure that children/youth and their families receive consistent assessment services through the state of Colorado when a referral for PA4 is screened in for assessment. This rule may also decrease the incidence of children/youth entering placement unnecessarily when becoming involved through a PA4 referral. These rules may also increase the utilization of lower levels of care by providing a structure for a meaningful assessment of the family's needs and directing caseworkers to utilize kinship placements whenever safe and possible.

### **3. Fiscal Impact**

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just "no impact" answer should include "no impact because...."***

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

There is no state fiscal impact because the changes included will be managed through current staff, and any modifications to training will be small and will not require the development of new training.

County Fiscal Impact

Additional assessment requirements will shift workload for county casework staff serving families who become involved with child welfare and are identified as PA4 at the point of initial assessment. Some increase in workload upon initial referral will be offset by a reduction in subsequent referrals. Due to the lack of requirements for assessment of PA4 referrals prior to a case opening, a significant number of previously assessed families are returning to county departments for additional subsequent assessments. In SFY17, 57.77% of clients who had previous PA4 assessments had additional

**Title of Proposed Rule: Program Area 4 Assessment Rules**

**CDHS Tracking #: 18-09-28-01**

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

referrals made to county departments of human services within 12 months, 38% had subsequent assessments, and of those referrals 39% were assigned by county staff as interfamilial abuse/neglect assessments. The data is similar for SFY15 and SFY16.

Additionally, earlier assessment is expected to reduce workload somewhat in the ongoing phase of cases since issues will be identified sooner. See the data description in question 4 for more detail on this analysis.

Federal Fiscal Impact

The federal Administration for Children and Families (ACF) does not have different requirements for children/youth who experience intrafamilial abuse and/or neglect and older children/youth who experience familial conflict that results in child welfare involvement. At this time, Colorado does not face federal sanctions as a result of inconsistent safety assessments in PA4; however, this practice issue is directly referenced in the most recent Child and Family Services Review report.

Other Fiscal Impact (such as providers, local governments, etc.)

There is no other fiscal impact, because these changes will primarily impact child welfare practice.

**4. Data Description**

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

Data available from Trails demonstrates clients with closed PA4 assessments have a 57% chance of having a subsequent referral within 12 months, 38% (1,015 unique clients) of those unique clients have their referral screened in, and 39%, (399 unique clients) are assigned as intrafamilial abuse/neglect. Meetings with county partners who have implemented the safety and risk assessment for all families including PA4 indicated that this practice has been helpful in identifying potential safety concerns that were not initially known by the reporting party, and ensuring that the county caseworker and supervisor are fully apprised of the safety and risk factors within the family.

**5. Alternatives to this Rule-making**

*Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just “no alternative” answer should include “no alternative because...”*

At this time there are no requirements for caseworkers to complete a full assessment of youth who have been identified as “youth in conflict” or “beyond control of parent,” nor is there a standardized method of designating referrals as PA4 or Program Area 5 (PA5) – Children in Need of Protection. The Division of Child Welfare has provided support and technical assistance to counties encouraging a more robust assessment, but this has not impacted practice. Additionally, current rules are inconsistent with federal requirements, which do not distinguish between PA4 and PA5. As a result, rules providing a minimum standard of practice are necessary to ensure children, youth, and families involved with child welfare through PA4 receive a complete assessment.

**Title of Proposed Rule:** **Program Area 4 Assessment Rules**

---

**CDHS Tracking #:** **18-09-28-01**

---

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
[Trevor.williams@state.co.us](mailto:Trevor.williams@state.co.us)

---

**Title of Proposed Rule:** **Program Area 4 Assessment Rules**

---

**CDHS Tracking #:** **18-09-28-01**

---

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
[Trevor.williams@state.co.us](mailto:Trevor.williams@state.co.us)

---

## OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.



New



Revision



Technical Change

Repeal

7.103	Revision	Receipt of referral alleging intrafamilial or third party abuse and/or neglect – information to be gathered	Receipt Of Referral Alleging Intrafamilial Or Third Party Abuse And/Or Neglect AND/OR A CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT– Information To Be Gathered	Added BCOP Language as previous language would not have captured that this information needs to be gathered for a BCOP Assessment.	PA4/Youth Services Task Group
7.103 A	Revision	Upon receipt of a report alleging intrafamilial or third party abuse and/or neglect, the county departments or the hotline county connection center shall gather and document the following information, when available.	Upon receipt of a report alleging intrafamilial or third party abuse and/or neglect, AND/OR A CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT, the county departments or the hotline county connection center shall gather and document the following information, when available.	Same as above.	PA4/Youth Services Task Group
7.103 (A)(1)(e)	Revision	Relationship to the alleged victim child(ren).	Relationship to the alleged victim child AND/OR CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT.	Same as above.	PA4/Youth Services Task Group
7.103 (A)(2)	Revision	Alleged victim child(ren)'s:	Alleged victim child(ren)'s AND/OR CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT:	Same as above.	PA4/Youth Services Task Group
7.103 (A)(3)(d)	Revision	Relationship to the alleged victim child(ren);	Relationship to the alleged victim child(ren) AND/OR CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT;	Same as above.	PA4/Youth Services Task Group
7.103 (A)(6)	Revision	The date, time, and location the alleged victim child(ren) were last seen by the reporting party.	The date, time, and location the alleged victim child(ren), AND/OR CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT were last seen by the reporting party.	Same as above.	PA4/Youth Services Task Group
7.103.4(B)	Revision	The alleged victim child(ren) are not located or reside in the State of Colorado. In this circumstance, the county department shall inform the other state or county department of the referral;	The alleged victim child(ren) OR CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT are not located or reside in the State of Colorado. In this circumstance, the county department shall inform the other state or county department of the referral;	Revised to ensure a BCOP referral can be screened out if the youth does not reside within the state.	PA4/Youth Services Task Group
7.103.4 (D)	Revision	Referral lacks sufficient information to locate the alleged victim child(ren);	Referral lacks sufficient information to locate the alleged victim child(ren) OR CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT;	Revised to ensure a BCOP referral can be screened out if there is not enough information to locate.	PA4/Youth Services Task Group
7.103.4 (G)	Technical Change	There is no current allegation of child abuse and/or neglect; and,	There is no current allegation of child abuse and/or neglect; and,	Modified to correct the list grammar.	

7.103.4 (H)	Revision	Other (applicable for Program Area 4 only and requires documentation explanation in the state automated case management system).	<del>Other (applicable for Program Area 4 only and requires documentation explanation in the state automated case management system).</del> MORE APPROPRIATE SERVICES FOR THE CHILD/YOUTH WHO IS ALLEGED BEYOND CONTROL OF PARENT ARE CURRENTLY BEING PROVIDED BY ANOTHER AGENCY;	Added the first of several specific reasons why a BCOP referral would not require further action. This would be used when the youth meets the definition of BCOP, but there are still more appropriate community based resources to serve the family.	PA4/Youth Services Task Group
7.103.4 (I)	New		REFERRAL DOES NOT MEET THE DEFINITION OF BEYOND CONTROL OF PARENT AS DEFINED IN SECTION CCR 2509-1, 7.000.2; AND	A new reason that a BCOP referral would not require further action, specifically indicating that the referral does not meet the definition of BCOP outlined in rule.	PA4/Youth Services Task Group
7.103.4(J)	Technical Change	I. The decision to screen out a referral shall be made by a minimum of two (2) certified child welfare staff from the same county or in conjunction with another county. When there is disagreement to screen out, the referral shall be reviewed through the red team process.	IJ. The decision to screen out a referral shall be made by a minimum of two (2) certified child welfare staff from the same county or in conjunction with another county. When there is disagreement to screen out, the referral shall be reviewed through the red team process.	Changed lettering.	
7.103.5 (B)	Technical Change	Any time a case is opened, it shall come through the referral or assessment process in the state automated case management system with the exception of Interstate Compact on the Placement of Children (ICPC), out of state subsidized adoption, out of state Medicaid, Interstate Compact on Adoption and Medicaid Assistance (ICAMA), or Division of Youth Corrections (DYC) Medicaid only.	Any time a case is opened, it shall come through the referral or assessment process in the state automated case management system with the exception of Interstate Compact on the Placement of Children (ICPC), out of state subsidized adoption, out of state Medicaid, Interstate Compact on Adoption and Medicaid Assistance (ICAMA), or Division of Youth <del>Corrections</del> SERVICES (DYCS) Medicaid only.	Corrected the name of Division of Youth Services.	
7.103.5(C)	Technical Change	A. The county department shall review and respond, either with a face-to-face intervention or by telephone, when notified by the court appointed detention screener or a law enforcement officer, of a child or youth in the custody of a law enforcement agency who is inappropriate for secure detention but cannot be returned home.	F. THE COUNTY DEPARTMENT SHALL REVIEW AND RESPOND, EITHER WITH A FACE-TO-FACE INTERVENTION OR BY TELEPHONE, WHEN NOTIFIED BY THE COURT-APPOINTED DETENTION SCREENER OR A LAW ENFORCEMENT OFFICER OF A CHILD <del>or</del> YOUTH IN THE CUSTODY OF A LAW ENFORCEMENT AGENCY WHO IS INAPPROPRIATE FOR SECURE DETENTION BUT CANNOT BE RETURNED HOME.	Moved This rule from 7.201, which is the case area of rule to 7.103.3 under "Initial review" within the assessment section. This rule ensures compliance with C.R.S. § 19-2-508.	PA4/Youth Services Task Group
7.103.6	Technical Change	7.103.61 Response Time for Referrals Assigned for Assessment	7.103.61 Response Time for Referrals Assigned for Assessment	Technical fix to correct numbering.	
7.103.6 (A)(3) (C)	Revision	If the victim child(ren)/youth cannot be located within the initial timeframe, subsequent face to face contact attempts shall continue to be made within every subsequent five business days.	If the victim child(ren)/youth OR BEYOND CONTROL OF PARENT YOUTH cannot be located within the initial timeframe, subsequent face to face contact attempts shall continue to be made within every subsequent five business days.	Added BCOP language to clarify that the rule applies to that population as well.	PA4/Youth Services Task Group
7.103.61	Technical Change	7.103.6 Red Teams	7.103.61 Red Teams	Technical fix to correct numbering.	



7.103.61 (C)(4)	Revision	Referrals alleging youth in conflict.	Referrals alleging youth in conflict A CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT.	Updates the language to reflect BCOP instead of older Youth in Conflict language.	PA4/Youth Services Task Group
7.105	New	(None)	(None)ASSESSMENTS INVOLVING ALLEGATIONS OF A CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT	This adds a new section for the structure of assessments for BCOP Child(ren)/Youth. 7.105 was previously empty.	PA4/Youth Services Task Group
7.105 (A)	New		<p>A. THE BEYOND CONTROL OF PARENT ASSESSMENT SHALL BE USED BASED ON THE FOLLOWING CRITERIA:</p> <ol style="list-style-type: none"> <li>1. THE REFERRAL IS ASSIGNED FOR ASSESSMENT;</li> <li>2. THE REFERRAL MEETS THE DEFINITION OF BEYOND CONTROL OF PARENT, AS DEFINED IN SECTION 7.000.2; AND</li> <li>3. THE REFERRAL DOES NOT CONTAIN ANY NEW ALLEGATIONS OF ABUSE AND/OR NEGLECT.</li> </ol>	This language identifies what referrals are appropriate for a BCOP Assessment. Number one indicates that the referral must contain allegations that meet the definition of BCOP as previously outlined in rule, and the second makes clear that any allegations of physical or sexual abuse/neglect should not be assessed using the rules.	PA4/Youth Services Task Group
7.105 (B)	New		<p>B. THE ASSESSMENT AT A MINIMUM SHALL INCLUDE:</p> <ol style="list-style-type: none"> <li>1. FACE-TO-FACE CONTACT WITH THE CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT IF THE CHILD/YOUTH IS ABLE TO BE LOCATED.</li> <li>2. FACE-TO-FACE CONTACT WITH THE PRIMARY CAREGIVER;</li> <li>3. ASSESSING THE LIKELIHOOD OF SUBSTANTIAL HARM RESULTING FROM THE CONFLICT AND THE CAREGIVER'S RESPONSE TO THE CONFLICT;</li> <li>4. CONSIDERING THE STRENGTHS AND NEEDS OF THE HOUSEHOLD;</li> <li>5. CONSIDERING APPROPRIATE RESOURCES FOR THE CHILD/YOUTH AND THE HOUSEHOLD;</li> <li>6. MAKING EFFORTS TO ENGAGE NON-CUSTODIAL PARENT(S);</li> <li>7. MAKING REASONABLE EFFORTS TO PREVENT OUT OF HOME PLACEMENT WHICH INCLUDES: ENGAGING FAMILY AND EXTENDED FAMILY IN SUPPORTING THE CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT AND THEIR CAREGIVER; PROVIDING IN HOME SERVICES IF APPROPRIATE AND AVAILABLE; AND ENGAGING FAMILY AND EXTENDED FAMILY IN SECURING A KINSHIP PLACEMENT IF NEEDED;</li> <li>8. THE USE OF THE COLORADO FAMILY SAFETY ASSESSMENT TOOL AS DESCRIBED IN SECTION 7.107.2;</li> <li>9. THE USE OF THE COLORADO RISK ASSESSMENT TOOL AS DESCRIBED IN SECTION 7.107.2;</li> <li>10. IF AT ANY POINT NEW INFORMATION IS GATHERED THAT CONTAINS INFORMATION DEFINED IN SECTION</li> </ol>	This rule creates parity with 7.104 and creates a minimum set of rules to ensure the assessment of all BCOP referrals that are assigned for assessment and ensures safety and risk are assessed as required by federal rules.	PA4/Youth Services Task Group, CFSR Safety and Risk PIP Subgroup

			7.103, A NEW REFERRAL SHALL BE GENERATED; AND 11. DOCUMENTATION OF ASSESSMENT ACTIVITIES WITHIN THE STATEWIDE AUTOMATED CHILD WELFARE INFORMATION SYSTEM.		
7.107.11(C)	Revision	If household members are not available at the time of initial response, the Colorado Family Safety Assessment shall be completed based on the information available and based on the interview or observation of the alleged victim child(ren)/youth.	If household members are not available at the time of initial response, the Colorado Family Safety Assessment shall be completed based on the information available and based on the interview or observation of the alleged victim child(ren)/youth AND/OR CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT.	Ensures safety and risk are assessed as required by federal rules.	CFSR Safety and Risk PIP Subgroup
7.107.11(E)	Revision	At the time of contact with the alleged victim child(ren)/youth or other family members and current or impending danger is identified, the entire Colorado Family Safety Assessment tool shall be completed.	At the time of contact with the alleged victim child(ren)/youth, AND/OR CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT, or other family members and current or impending danger is identified, the entire Colorado Family Safety Assessment tool shall be completed.	Ensures safety and risk are assessed as required by federal rules.	CFSR Safety and Risk PIP Subgroup

**Title of Proposed Rule: Program Area 4 Assessment Rules****CDHS Tracking #: 18-09-28-01**Office, Division, & Program:  
OCYF, DCWRule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us**STAKEHOLDER COMMENT SUMMARY****Development**

*The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):*

In October of 2016 a PAC and Child Welfare Sub-PAC authorized task group began meeting to recommend revisions to rules related to PA4. This group's membership included representatives from large, medium, and small counties; county attorneys, the Office of the Child's Representative (OCR), Senate Bill 94; Runaway and Homeless Youth Providers; and a provider network. Judicial was invited but did not participate. Meetings were held over the course of nearly two years and the group recommended this rule package unanimously. Additionally, the Safety and Risk assessment rules were discussed as a part of one of the CFSR program improvement plan subgroups.

**This Rule-Making Package**

*The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:*

All members of the PA4 task group were notified that this rule package would be proposed at the final task group meeting.

**Other State Agencies**

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

☐ Yes ☒ No

If yes, who was contacted and what was their input?

**Sub-PAC**

Have these rules been reviewed by the appropriate Sub-PAC Committee?

☒ Yes ☐ No

Name of Sub-PAC	Child Welfare		
Date presented	10/4/2018		
What issues were raised?	A concern was raised regarding the use of the Colorado Risk Tool within PA4 cases, and a concern that the Colorado Safety and Colorado Risk Tools could be duplicative once Family First Act is implemented. The rules passed unanimously with 2 abstaining votes.		
Vote Count	For	Against	Abstain
	Unanimous	0	2
If not presented, explain why.			

**PAC**

Have these rules been approved by PAC?

☐ Yes ☒ No

**Title of Proposed Rule:** Program Area 4 Assessment Rules

**CDHS Tracking #:** 18-09-28-01

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

Date presented	September 2018		
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.			

**Other Comments**

Comments were received from stakeholders on the proposed rules:

☒ Yes    ☐ No

*If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.*

**EXAMPLE OF RULES WITH  
SECRETARY OF STATE'S STYLE CODING  
REPLACE WITH YOUR OWN RULES**

(12 CCR 2509-2)

\*\*\*\*\* (BREAK BETWEEN SECTIONS)

[Note: Changes to rule text are identified as follows: deletions are shown as "strikethrough", additions are in "All Caps", and changes made between initial review and final adoption are in [brackets] or highlighted yellow]

**7.103 Receipt Of Referral Alleging Intrafamilial Or Third Party Abuse And/Or Neglect AND/OR A CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT– Information To Be Gathered**

A. Upon receipt of a report alleging intrafamilial or third party abuse and/or neglect, AND/OR A CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT, the county departments or the Hotline County Connection Center shall gather and document the following information, when available.

1. Reporting party's:
  - a. Name;
  - b. Address;
  - c. Telephone number;
  - d. Reporter type; and
  - e. Relationship to the alleged victim child(ren)/youth AND/OR A CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT.
2. Alleged victim child(ren)/youth's AND/OR A CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT:
  - a. Name;
  - b. Address;
  - c. Current specific location;
  - d. School or child care (if applicable);
  - e. Birth date(s) or estimated age(s);

**Title of Proposed Rule: Program Area 4 Assessment Rules**

**CDHS Tracking #: 18-09-28-01**

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

- 
- f. Information as to whether or not the child(ren)/youth have American Indian or native Alaskan heritage, and if so, the tribal affiliation; and
      - g. Any developmental delays, physical disabilities, competency or cultural considerations.
  3. Family and household members:
    - a. Names;
    - b. Birth date(s) or estimated age(s);
    - c. Relationship to each other;
    - d. Relationship to the alleged victim child(ren)/youth AND/OR A CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT; and
    - e. Any developmental delays, physical disabilities, competency or cultural considerations.
  4. Person(s) alleged to be responsible for the abuse and/or neglect:
    - a. Name;
    - b. Birth date(s) or estimated age(s);
    - c. Present location;
    - d. Current or last known address;
    - e. Relationship to the alleged victim child(ren)/youth; and
    - f. Any developmental delays, physical disabilities, competency or cultural considerations.
  5. Narrative describing the presenting problems and specific allegations of the abuse and/or neglect, including but not limited to:
    - a. When it occurred;
    - b. Location;
    - c. Witness(es) of the incident; and
    - d. Description of any injury that was sustained.
  6. The date, time, and location the alleged victim child(ren)/youth AND/OR A CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT were last seen by the reporting party.
  7. The nature of any other environmental hazards in the home which may impact child(ren)/youth or worker safety.

**Title of Proposed Rule: Program Area 4 Assessment Rules**

**CDHS Tracking #: 18-09-28-01**

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

8. The name and contact information of any individuals who may have information about the referral, and/or the identity and contact information of collateral agencies and individuals involved with the family.
9. Date and time referral received.
10. Family strengths and supports, and/or other protective factors or actions taken.

\*\*\*\*\*

#### **7.103.4 Referrals Requiring No Further Action**

County departments may determine that a referral does not require further action and screen it out for the following reasons:

- A. The current allegations have previously been assessed;
- B. The alleged victim child(ren) OR CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT are not located or reside in the State of Colorado. In this circumstance, the county department shall inform the other state or county department of the referral;
- C. Referral does not meet criteria of abuse and/or neglect as defined in statutes and regulations;
- D. Referral lacks sufficient information to locate the alleged victim child(ren) OR CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT; or
- E. Referral is duplicative of a previous referral. In this circumstance, the county department shall associate the duplicate referral with the previous referral in the state automated case management system).

A referral cannot be considered duplicate if the following circumstances are present:

1. Different incident date;
  2. Different alleged victim;
  3. Different alleged person responsible for abuse and/or neglect;
  4. Different household; and/or
  5. Additional information poses a new or renewed threat of safety to the child(ren)/youth.
- F. The person alleged to be responsible for the abuse and/or neglect is a third (3rd) party and ten (10) years of age or older. In this circumstance, the county department shall send the referral to the appropriate law enforcement agency.
  - G. There is no current allegation of child abuse and/or neglect; and,
  - H. Other (applicable for Program Area 4 only and requires documentation explanation in the state automated case management system) MORE APPROPRIATE SERVICES FOR THE CHILD/YOUTH WHO IS

**Title of Proposed Rule: Program Area 4 Assessment Rules**

**CDHS Tracking #: 18-09-28-01**

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

ALLEGED BEYOND CONTROL OF PARENT ARE CURRENTLY BEING PROVIDED BY ANOTHER AGENCY;

- I. REFERRAL DOES NOT MEET THE DEFINITION OF BEYOND CONTROL OF PARENT AS DEFINED IN SECTION CCR 2509-1, 7.000.2; AND
- I.J. The decision to screen out a referral shall be made by a minimum of two (2) certified child welfare staff from the same county or in conjunction with another county. When there is disagreement to screen out, the referral shall be reviewed through the red team process.

\*\*\*\*\*

**7.103.5 Criteria For Assigning A Referral For Assessment**

- A. County departments shall screen in and assign a referral for assessment if it:
  - 1. Contains specific allegations of known or suspected abuse and/or neglect as defined in Section 7.000.2;
  - 2. Provides sufficient information to locate the alleged victim; and,
  - 3. Identifies a victim under the age of eighteen (18).
- B. Any time a case is opened, it shall come through the referral or assessment process in the state automated case management system with the exception of Interstate Compact on the Placement of Children (ICPC), out of state subsidized adoption, out of state Medicaid, Interstate Compact on Adoption and Medicaid Assistance (ICAMA), or Division of Youth Corrections SERVICES (DYGS) Medicaid only.
- C. THE COUNTY DEPARTMENT SHALL REVIEW AND RESPOND, EITHER WITH A FACE-TO-FACE INTERVENTION OR BY TELEPHONE, WHEN NOTIFIED BY THE COURT-APPOINTED DETENTION SCREENER OR A LAW ENFORCEMENT OFFICER OF A CHILD or YOUTH IN THE CUSTODY OF A LAW ENFORCEMENT AGENCY WHO IS INAPPROPRIATE FOR SECURE DETENTION BUT CANNOT BE RETURNED HOME.

\*\*\*\*\*

**7.103.610 Response Time for Referrals Assigned for Assessment**

- A. County departments shall assign the appropriate response time for assessments based upon the date the referral is received using the following criteria:
  - 1. An immediate response is required when a referral indicates that:
    - a. There may be present danger of moderate to severe harm; or,
    - b. The child's vulnerability and/or factors such as drug and alcohol abuse, violence, isolation, or risk of flight increase the need for immediate response.



**Title of Proposed Rule: Program Area 4 Assessment Rules**

**CDHS Tracking #: 18-09-28-01**

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

- C. An immediate response shall require a response within eight (8) hours from the receipt of the referral. If the victim child(ren)/youth cannot be located within the initial timeframe, subsequent face to face contact attempts shall continue to be made every twenty-four (24) hours from the time of the initial attempted contact.
- 2. A three (3) calendar day response is required when a referral indicates that:
  - a. There may be impending danger of moderate to severe harm; or,
  - b. The alleged victim child(ren)'s vulnerability and/or factors such as drug and alcohol abuse, violence, isolation, or risk of flight, increase the need for intervention in the near future.
  - c. The three (3) calendar day count starts on the day following the receipt of a referral, and expires at the end of the third calendar day at 11:59 PM following receipt of the referral.
  - D. If the victim child(ren)/youth cannot be located within the initial timeframe, subsequent face to face contact attempts shall continue to be made within every subsequent three calendar days.
- 3. A five (5) working day response is required when:
  - A. A referral indicates an absence of safety concerns.
  - B. The five (5) day count starts on the first business day following the receipt of a referral and expires at the end of the fifth business day at 11:59 PM following the receipt of the referral.
  - C. If the victim child(ren)/youth OR BEYOND CONTROL OF PARENT YOUTH cannot be located within the initial timeframe, subsequent face to face contact attempts shall continue to be made within every subsequent five business days.
- B. The decision of how quickly to initiate an assessment shall be based on specific reported information that is credible and that indicates whether a child may be unsafe or at risk of harm.

\*\*\*\*\*

**7.103.61 Red Teams**

- A. County departments shall implement a process utilizing the Red Team framework to review referrals with:
  - 1. Child welfare history that includes three (3) or more assessments within the past year regarding the household members in the current referral;
  - 2. Narrative that identifies the alleged victim child(ren)/youth as a child/youth with a vulnerability as defined in section 7.000.2;
  - 3. Two (2) or more screened out non-duplicative referrals with no assessment in the prior twelve (12) months; and/or,

**Title of Proposed Rule: Program Area 4 Assessment Rules**

**CDHS Tracking #: 18-09-28-01**

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

4. Criminal history that includes felony and/or misdemeanor convictions related to child abuse and/or neglect, including crimes of violence, domestic violence, and/or unlawful sexual behavior regarding the household members in the current referral.
- B. County departments practicing Differential Response shall utilize the RED Team process for track assignment decisions when considering the Family Assessment Response (FAR) track on assessments requiring three (3) calendar or five (5) business day response times.
- C. The Red Team process is not required for review of the following exceptions:
  1. Referrals necessitating an immediate response;
  2. Referrals necessitating a response prior to the next business day;
  3. Referrals alleging institutional abuse and/or neglect; or,
  4. Referrals alleging youth in conflictA CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT.
- D. County departments may choose to utilize the RED team process for the above exceptions.
- E. The RED team process shall be documented in the framework. The documentation shall reflect the discussion and justification for the decisions.
- F. All RED team decisions shall be approved by a certified supervisor by the end of the calendar day and documented in the state automated case management system by the end of the next business day.

\*\*\*\*\*

**7.105 (None)ASSESSMENTS INVOLVING ALLEGATIONS OF A CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT**

- A. THE BEYOND CONTROL OF PARENT ASSESSMENT SHALL BE USED BASED ON THE FOLLOWING CRITERIA:
  1. THE REFERRAL IS ASSIGNED FOR ASSESSMENT;
  2. THE REFERRAL MEETS THE DEFINITION OF BEYOND CONTROL OF PARENT, AS DEFINED IN SECTION 7.000.2; AND,
  3. THE REFERRAL DOES NOT CONTAIN ANY NEW ALLEGATIONS OF ABUSE AND/OR NEGLECT.
- B. THE ASSESSMENT AT A MINIMUM SHALL INCLUDE:
  1. FACE-TO-FACE CONTACT WITH THE CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT IF THE CHILD/YOUTH IS ABLE TO BE LOCATED.
  2. FACE-TO-FACE CONTACT WITH THE PRIMARY CAREGIVER;
  3. ASSESSING THE LIKELIHOOD OF SUBSTANTIAL HARM RESULTING FROM THE CONFLICT AND THE CAREGIVER'S RESPONSE TO THE CONFLICT;

**Title of Proposed Rule: Program Area 4 Assessment Rules**

**CDHS Tracking #: 18-09-28-01**

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

4. CONSIDERING THE STRENGTHS AND NEEDS OF THE HOUSEHOLD;
5. CONSIDERING APPROPRIATE RESOURCES FOR THE CHILD/YOUTH AND THE HOUSEHOLD;
6. MAKING EFFORTS TO ENGAGE NON-CUSTODIAL PARENT(S);
7. MAKING REASONABLE EFFORTS TO PREVENT OUT OF HOME PLACEMENT WHICH INCLUDES: ENGAGING FAMILY AND EXTENDED FAMILY IN SUPPORTING THE CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT AND THEIR CAREGIVER; PROVIDING IN HOME SERVICES IF APPROPRIATE AND AVAILABLE; AND ENGAGING FAMILY AND EXTENDED FAMILY IN SECURING A KINSHIP PLACEMENT IF NEEDED;
8. THE USE OF THE COLORADO FAMILY SAFETY ASSESSMENT TOOL AS DESCRIBED IN SECTION 7.107.2;
9. THE USE OF THE COLORADO RISK ASSESSMENT TOOL AS DESCRIBED IN SECTION 7.107.2;
10. IF AT ANY POINT NEW INFORMATION IS GATHERED THAT CONTAINS INFORMATION DEFINED IN SECTION 7.103, A NEW REFERRAL SHALL BE GENERATED; AND
11. DOCUMENTATION OF ASSESSMENT ACTIVITIES WITHIN THE STATEWIDE AUTOMATED CHILD WELFARE INFORMATION SYSTEM.

\*\*\*\*\*

**7.107.11 Parameters for Use of the Colorado Family Safety Assessment Tool**

The Colorado Family Safety Assessment shall be completed:

- A. At the time of initial response with household members.
- B. As soon as additional household members are available, each household member shall be assessed using the current or impending dangers identified in the Colorado Family Safety Assessment tool.
- C. If household members are not available at the time of initial response, the Colorado Family Safety Assessment shall be completed based on the information available and based on the interview or observation of the alleged victim child(ren)/youth AND/OR CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT.
- D. If no current or impending danger is identified within 14 calendar days through the Colorado Family Safety Assessment, interviews with additional household members identified outside of the 14 calendar days, shall be documented in the state automated case management system.
- E. At the time of contact with the alleged victim child(ren)/youth AND/OR CHILD/YOUTH WHO IS BEYOND CONTROL OF PARENT, or other family members and current or impending danger is identified, the entire Colorado Family Safety Assessment tool shall be completed.
- F. The tool shall be completed using available information and accessible household members to mitigate the danger.

**Title of Proposed Rule: Program Area 4 Assessment Rules**

**CDHS Tracking #: 18-09-28-01**

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

- G. Prior to end dating a safety plan.
- H. Whenever there is a significant change in household circumstances or situations that might pose a new or renewed threat to the safety of child(ren)/youth.
- I. Prior to reunification.
- J. Prior to child(ren)/youth returning home.
- K. In all program area 5 (PA 5) referrals being assessed, except:
  - 1. Institutional abuse assessments, as described in section 7.104.22;
  - 2. Fatality assessments when there are no surviving siblings, or;
  - 3. When caregivers have abandoned an infant as described in C.R.S. 19-3-304.5.

XX

# Notice of Proposed Rulemaking

**Tracking number**

2018-00603

**Department**

500,1008,2500 - Department of Human Services

**Agency**

2509 - Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

**CCR number**

12 CCR 2509-3

**Rule title**

PROGRAM AREAS, CASE CONTACTS, AND ONGOING CASE REQUIREMENTS

## Rulemaking Hearing

**Date**

12/07/2018

**Time**

08:30 AM

**Location**

1575 Sherman Street

**Subjects and issues involved**

In 2012, the Child Fatality Review Team recommended that the Division of Child Welfare explore the implementation of a safety assessment tool for the Program Area 4 (PA4) Youth in Conflict population. Additionally, counties and stakeholders expressed concerns that services being provided to the PA4 population lacked consistency between counties. In 2018, the Federal Child and Family Services Review (CFSR) identified a lack of face to face contacts with parent as an area that needed to be improved. These concerns were largely due to a lack of rules implementing a minimum standard of practice for the PA4 population, which led children/youth to enter placement and cases opening without a caseworker ever meeting a parent in person or seeing the home, children/youth remaining in care for extended periods of time, and a lack of urgency in locating permanent placements for PA4 children/youth. These rules are intended to provide a minimum standard of practice in order to reduce unnecessary out of home placements by promoting the use of kin for out of home placements, increase parent engagement, ensure that all families are assessed for safety and risk, and ensure that caseworkers continue to meet with parents face to face after entering foster care.

**Statutory authority**

26-1-107, C.R.S. (2015), 26-1-109, C.R.S. (2015), 26-1-111, C.R.S. (2015), 26-1-111, C.R.S. (2015)

## Contact information

**Name**

Trevor Williams

**Title**

Rule Author

**Telephone**

303-866-4539

**Email**

trevor.williams@state.co.us

**Title of Proposed Rule:** Program Area 4 Case Rules  
**CDHS Tracking #:** 18-09-28-04  
**Office, Division, & Program:** OCYF, DCW      **Rule Author:** Trevor Williams      **Phone:** 303-866-4539  
**Email:** Trevor.williams@state.co.us

## RULEMAKING PACKET

**Type of Rule:** *(complete a and b, below)*

- a. ☒ Board      ☐ Executive Director  
 b. ☒ Regular      ☐ Emergency

**This package is submitted to State Board Administration as:** *(check all that apply)*

☒ AG Initial Review     
 ☒ Initial Board Reading     
 ☐ AG 2<sup>nd</sup> Review     
 ☐ Second Board Reading / Adoption

**This package contains the following types of rules:** *(check all that apply)*

Number  
 8 Amended Rules  
 0 New Rules  
 3 Repealed Rules  
 0 Reviewed Rules

What month is being requested for this rule to first go before the State Board?	1/2019
What date is being requested for this rule to be effective?	3/1/19
Is this date legislatively required?	no

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

**Office Director Approval:** \_\_\_\_\_ **Date:** \_\_\_\_\_

### REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Comments:

Estimated Dates:      1st Board \_\_\_\_\_      2nd Board \_\_\_\_\_      Effective Date \_\_\_\_\_

**Title of Proposed Rule:** Program Area 4 Case Rules

**CDHS Tracking #:** 18-09-28-04

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

## **STATEMENT OF BASIS AND PURPOSE**

### **Summary of the basis and purpose for new rule or rule change.**

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. **1500 Char max***

In 2012, the Child Fatality Review Team recommended that the Division of Child Welfare explore the implementation of a safety assessment tool for the Program Area 4 (PA4) – Youth in Conflict population. Additionally, counties and stakeholders expressed concerns that services being provided to the PA4 population lacked consistency between counties. In 2018, the Federal Child and Family Services Review (CFSR) identified a lack of face to face contacts with parent as an area that needed to be improved. These concerns were largely due to a lack of rules implementing a minimum standard of practice for the PA4 population, which led children/youth to enter placement and cases opening without a caseworker ever meeting a parent in person or seeing the home, children/youth remaining in care for extended periods of time, and a lack of urgency in locating permanent placements for PA4 children/youth. These rules are intended to provide a minimum standard of practice in order to reduce unnecessary out of home placements by promoting the use of kin for out of home placements, increase parent engagement, ensure that all families are assessed for safety and risk, and ensure that caseworkers continue to meet with parents face to face after entering foster care.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

- ☐ to comply with state/federal law and/or
- ☐ to preserve public health, safety and welfare

Justification for emergency:

### **State Board Authority for Rule:**

Code	Description
26-1-107, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities

**Program Authority for Rule:** *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
26-1-111, C.R. S. (2015)	State department to promulgate rules for public assistance and welfare activities

Does the rule incorporate material by reference? ☐ Yes ☒ No

**Title of Proposed Rule:** Program Area 4 Case Rules

**CDHS Tracking #:** 18-09-28-04

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

Does this rule repeat language found in statute?

☐

Yes

☒

No

If yes, please explain.

n/a



**Title of Proposed Rule:** **Program Area 4 Case Rules**

**CDHS Tracking #:** 18-09-28-04

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

## **REGULATORY ANALYSIS**

### **1. List of groups impacted by this rule.**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

Children, youth and families in Colorado along with county child welfare caseworkers will benefit from this rule. The changes will ensure that families who become involved with child welfare - due to issues stemming from conflict between the parent and children/youth - receive services that focus on the reason for involvement that is determined by the original assessment. The changes also make clear that services through PA4 should focus on achieving permanency for children/youth and keeping the children/youth with family whenever possible by creating developmentally appropriate parity with Program Area 5 (PA5) – Children in Need of Protection.

### **2. Describe the qualitative and quantitative impact.**

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

These rules may decrease the length of time children/youth remain in higher levels of care and out of home placements due to an increase in the consistency of contact. Additionally, these rules direct caseworkers to pursue permanency as the primary goal. This should increase children/youth who become involved with child welfare through PA4 returning to family, rather than exiting care into adulthood.

### **3. Fiscal Impact**

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just “no impact” answer should include “no impact because....”***

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

There is no state fiscal impact, because the changes included will be managed through current staff and any modifications to training will be small and will not require the development of new training.

County Fiscal Impact

Creating a requirement to have face to face visits for PA4 that are consistent with what is required in PA5 will increase workload somewhat for caseworkers. Data from Trails demonstrates that workloads would only be impacted in 20% of PA4 cases. This would translate to an increased rate of contact for 184 of the 919 out of home PA4 cases currently being served, and includes all permanency goals. This number may change if controlled for permanency goal, and would likely result in a reduced workload impact.

Federal Fiscal Impact

**Title of Proposed Rule:** **Program Area 4 Case Rules**

**CDHS Tracking #:** 18-09-28-04

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

The federal Administration for Children and Families (ACF) does not have different requirements for children/youth who experience intrafamilial abuse and/or neglect and older children/youth who experience familial conflict that results in child welfare involvement. At this time, Colorado does not face federal sanctions as a result of inconsistent safety assessments in PA4; however, this practice issue is directly referenced in the most recent CFSR report.

Other Fiscal Impact (such as providers, local governments, etc.)

There is no other fiscal impact, because these changes will primarily impact child welfare practice.

#### **4. Data Description**

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

We utilized data to identify the potential impacts to workload. Additionally, information was taken from current practice in PA5 in order to determine what a minimum standard of practice might be for the PA4 population.

#### **5. Alternatives to this Rule-making**

*Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just “no alternative” answer should include “no alternative because...”*

At this time there are no rules creating a minimum standard of practice for counties when they work with children, youth, and families who have been identified as “beyond control of parent”. The Division of Child Welfare has provided support and technical assistance to counties encouraging a more robust practice. Without rules, there is no requirement for caseworkers to make face to face contact with the parents of youth who are in foster care, nor is there a requirement to focus their practice on achieving permanency for youth involved through PA4. As a result, rules providing a minimum standard of practice when working with children, youth, and families involved with through PA4 are necessary.

**Title of Proposed Rule:** **Program Area 4 Case Rules**

---

**CDHS Tracking #:** 18-09-28-04

---

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

---

## OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.



New



Revision



Technical Change

Repeal

Repeal

Rule section Number	Type of Change/ Modification	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.201	Revision	PROGRAM AREA 4 - YOUTH IN CONFLICT	PROGRAM AREA 4 - YOUTH IN CONFLICT BEYOND CONTROL OF PARENT  The Program Area 4 definition and target group information is located at Section 7.000.1, B (12 CCR 2509-1). REFERRAL AND ASSESSMENT ACTIVITIES FOR PROGRAM AREA 4 ARE LOCATED IN SECTION 7.104.4, ET AL. (12 CCR 2509-2).	Revised to reflect the new Program Area title in 7.000.1. Added for reference, as the assessment information was previously located here.	PA4/Youth Services Task Group
7.201.1	Revision	INITIAL ASSESSMENT	PROVISION OF ONGOING BEYOND CONTROL OF PARENT CASE SERVICES-INITIAL ASSESSMENT	This heading is being changed as assessment activities previously located in 7.200 have been written in 7.100. The new title reflects the intent of this section and creates developmentally appropriate parity in structure and content with Program Area 5.	PA4/Youth Services Task Group
7.201.1(A)	Revision	A. The county department shall respond, either with a face-to-face intervention or by telephone, when notified by the court appointed detention screener or a law enforcement officer, of a child or youth in the custody of a law enforcement agency who is inappropriate for secure detention but cannot be returned home.	A. <del>The county department shall respond, either with a face-to-face intervention or by telephone, when notified by the court appointed detention screener or a law enforcement officer, of a child or youth in the custody of a law enforcement agency who is inappropriate for secure detention but cannot be returned home.</del> BEYOND CONTROL OF PARENT SERVICES SHALL BE BASED ON THE ASSESSMENT COMPLETED IN ACCORDANCE WITH CCR 2509-2; 7.105, AND THE CONFLICT BETWEEN THE PARENT/CAREGIVER AND THE CHILD/YOUTH. SERVICES SHALL BE OFFERED THAT PRESERVE THE CHILD/YOUTH'S PERMANENCY WITH THEIR FAMILY, CAREGIVER, KIN AND/OR COMMUNITY WHENEVER POSSIBLE. IF PLACEMENT IS REQUIRED, THE CHILD/YOUTH SHALL BE PLACED IN THE LEAST RESTRICTIVE SETTING, CONSISTENT WITH THE CHILD/YOUTH AND FAMILY'S ASSESSED NEEDS. WHEN THE CHILD/YOUTH CANNOT BE SAFELY RETURNED TO THE FAMILY FROM WHOM THEY WERE REMOVED, SERVICES SHALL BE PROVIDED TO ACHIEVE AN ALTERNATIVE PERMANENCY PLAN THAT PROVIDES FOR THE CHILD/YOUTH'S SAFETY AND WELL-BEING IN A TIMELY MANNER.	This rule has been moved to 7.103.3 as assessment activities previously located in 7.200 have been written in 7.100, and this rule needed to be kept, but moved to the appropriate location. The new rule creates developmentally appropriate parity with 7.202.1 (B) and provides a clear description of the purpose of a PA4 case, which previously did not exist within rule.	PA4/Youth Services Task Group

7.201.1 (B)	Revision	B. The county department shall complete a needs assessment for children or youth who do not require physical restriction but for whom immediate removal from the home appears necessary for his/her protection or the protection of others. The county department shall provide needed services, other than secure detention, such as temporary placement, crisis intervention, or in home services	A. <del>The county department shall complete a needs assessment for children or youth who do not require physical restriction but for whom immediate removal from the home appears necessary for his/her protection or the protection of others. The county department shall provide needed services, other than secure detention, such as temporary placement, crisis intervention, or in home services.</del> AT THE POINT OF CASE OPENING, COUNTY DEPARTMENTS SHALL ENSURE PERTINENT INFORMATION REGARDING CHILD/YOUTH SAFETY, PERMANENCY, AND WELL-BEING ARE TRANSFERRED TO ANY NEWLY ASSIGNED CASEWORKER. THIS SHALL BE ACCOMPLISHED THROUGH AT LEAST ONE OF THE FOLLOWING METHODS, BASED ON THE NATURE OF THE CASE AND THE CAPACITY OF THE COUNTY DEPARTMENT, AND SHALL BE DOCUMENTED IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM: 1. FAMILY ENGAGEMENT OR OTHER EQUIVALENT REVIEW TEAM MEETING INVOLVING CASEWORKERS AND/OR SUPERVISORS, FAMILY AND COMMUNITY PROVIDERS; OR 2. STAFFING BETWEEN CASEWORKERS AND/OR SUPERVISORS.	The old rule is replaced by an assessment structure for these cases in 7.105. The new rule creates developmentally appropriate parity with 7.202.1(C).	PA4/Youth Services Task Group
7.201.1 (C)	Repeal	C. A child or youth shall not be removed from the home without police protective custody or hold, a court order, or a signed voluntary placement agreement. Before or at the conclusion of the court-ordered placement (72 hours) or police hold (48 hours), the child or youth shall: 1. Be returned home; or, 2. Remain in court-ordered placement; or, 3. Continue in placement by virtue of a voluntary placement agreement signed by the parents/guardians.	C. <del>A child or youth shall not be removed from the home without police protective custody or hold, a court order, or a signed voluntary placement agreement. Before or at the conclusion of the court-ordered placement (72 hours) or police hold (48 hours), the child or youth shall:</del> 1. <del>Be returned home; or,</del> 2. <del>Remain in court-ordered placement; or,</del> 3. <del>Continue in placement by virtue of a voluntary placement agreement signed by the parents/guardians.</del>	This rule is redundant to rules outlined in 7.304.1 of existing rule.	PA4/Youth Services Task Group
7.201.1 (D)	Repeal	D. The county department shall screen the child/youth for risk of sex trafficking in accordance with section 7.303.4 (A).	D. <del>The county department shall screen the child/youth for risk of sex trafficking in accordance with section 7.303.4 (A).</del>	This rule is redundant to the rules location in 7.303.4 of existing rule as well as the assessment rules located in 7.104.4 (C)(a) of this rule package.	PA4/Youth Services Task Group
7.201.1 (E)	Repeal	E. If at any point during the assessment, a county department becomes aware of an allegation that a child/youth is, or may be, a victim of sex trafficking, the county department shall: 1. Report immediately, and no later than twenty-four (24) hours from when the county department becomes aware, to the local law enforcement agency; and, 2. Document the details of the report to law enforcement in the state automated case management system.	E. <del>If at any point during the assessment, a county department becomes aware of an allegation that a child/youth is, or may be, a victim of sex trafficking, the county department shall:</del> 1. <del>Report immediately, and no later than twenty-four (24) hours from when the county department becomes aware, to the local law enforcement agency; and,</del> 2. <del>Document the details of the report to law enforcement in the state automated case management system.</del>	This rule is redundant to the rules location in 7.303.4 of existing rule as well as the assessment rules located in 7.104.4 (C)(a) of this rule package.	PA4/Youth Services Task Group

7.204 (D)	Revision	<p>D. Program Area 5 Out-of-Home Placement Concerning Parents</p> <p>While a child or youth remains in out-of-home placement, the county department shall have at least monthly contact with the parent, parent surrogate or guardian, with face-to-face contact occurring at least every other month. Such contacts shall occur until a motion for termination of parental rights is filed, or until "Return Home" is no longer the primary permanency goal.</p>	<p>D. Program AreaS 4 AND 5 Out-of-Home Placement Concerning Parents</p> <p>While a child or youth remains in out-of-home placement, the county department shall have at least monthly FACE-TO-FACE contact with the parent, parent surrogate or guardian; <del>with face-to-face contact occurring at least every other month. Such contacts shall occur until a motion for termination of parental rights is filed, or until "Return Home" is no longer the primary permanency goal</del> AS DESCRIBED IN 7.202.1(F).</p>	<p>This revision ensures that caregivers of youth in out of home placement through PA4 continue to have the level of contact with the county as PA5. Struck "other" to bring in line with new PA5 rules.</p>	PA4/Youth Services Task Group
7.204 (E)	Revision	<p>E. Program Areas 4 and 6 Out-of-Home Services</p> <p>While a child or youth remains in out-of-home placement, the county department shall have at least monthly face-to-face or telephone contact with the parent, parent surrogate or guardian. Such contacts shall occur until a motion for termination of parental rights is filed, or until "Return Home" is no longer the primary permanency goal.</p>	<p>E. Program Areas 4 AND 6 Out-of-Home Services</p> <p>While a child or youth remains in out-of-home placement, the county department shall have at least monthly face-to-face or telephone contact with the parent, parent surrogate or guardian. Such contacts shall occur until a motion for termination of parental rights is filed, or until "Return Home" is no longer the primary permanency goal.</p>	<p>This revision removes program area 4 from this entry, as a new entry for program area 4 is recommended in 7.204(D).</p>	PA4/Youth Services Task Group

**Title of Proposed Rule: Program Area 4 Case Rules****CDHS Tracking #:** 18-09-28-04Office, Division, & Program:  
OCYF, DCWRule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us**STAKEHOLDER COMMENT SUMMARY****Development**

*The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):*

In October of 2016 a PAC and Child Welfare Sub-PAC authorized task group began meeting to recommend revisions to rules related to PA4. This group's membership included representatives from; large, medium, and small counties; county attorneys, the Office of the Child's Representative (OCR), Senate Bill 94; Runaway and Homeless Youth Providers; and, a provider network. Judicial was invited but did not participate. Meetings were held over the course of nearly two years and the group recommended this rule package unanimously.

**This Rule-Making Package**

*The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:*

Members of the PA4 task group were notified that these rules would be proposed at the final task group meeting.

**Other State Agencies**

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

☐ Yes ☒ No

If yes, who was contacted and what was their input?

**Sub-PAC**

Have these rules been reviewed by the appropriate Sub-PAC Committee?

☐ Yes ☒ No

Name of Sub-PAC	Child Welfare		
Date presented	10/4/2018		
What issues were raised?	These rules passed unanimously with no abstentions. The members asked that the rules in 7.204 be adjusted to ensure that they do not conflict with other rules being worked on in 7.202.1. This issue was addressed.		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	Unanimous	0	0
If not presented, explain why.			

**PAC**

Have these rules been approved by PAC?

☐ Yes ☒ No

Date presented	
What issues were raised?	

**Title of Proposed Rule:** Program Area 4 Case Rules

**CDHS Tracking #:** 18-09-28-04

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

Vote Count

<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.		

**Other Comments**

Comments were received from stakeholders on the proposed rules:

☒ Yes    ☐ No

*If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.*



<b>Title of Proposed Rule: Program Area 4 Case Rules</b>		
<b>CDHS Tracking #: 18-09-28-04</b>		
Office, Division, & Program: OCYF, DCW	Rule Author: Trevor Williams	Phone: 303-866-4539
		Email: Trevor.williams@state.co.us

**EXAMPLE OF RULES WITH  
SECRETARY OF STATE'S STYLE CODING  
REPLACE WITH YOUR OWN RULES**

(12 CCR 2509-3)

\*\*\*\*\* (BREAK BETWEEN SECTIONS)

[Note: Changes to rule text are identified as follows: deletions are shown as "strikethrough", additions are in "All Caps", and changes made between initial review and final adoption are in [brackets] or highlighted yellow]

**7.201 PROGRAM AREA 4 - ~~YOUTH IN CONFLICT~~BEYOND CONTROL OF PARENT-**

The Program Area 4 definition and target group information is located at Section 7.000.1, B (12 CCR 2509-1).

REFERRAL AND ASSESSMENT ACTIVITIES FOR PROGRAM AREA 4 ARE LOCATED IN SECTION 7.105, ET AL. (12 CCR 2509-2).

**7.201.1 PROVISION OF ONGOING BEYOND CONTROL OF PARENT CASE SERVICES ~~INITIAL ASSESSMENT~~**

- A. ~~The county department shall respond, either with a face-to-face intervention or by telephone, when notified by the court appointed detention screener or a law enforcement officer, of a child or youth in the custody of a law enforcement agency who is inappropriate for secure detention but cannot be returned home~~BEYOND CONTROL OF PARENT SERVICES SHALL BE BASED ON THE ASSESSMENT COMPLETED IN ACCORDANCE WITH CCR 2509-2; 7.105, AND THE CONFLICT BETWEEN THE PARENT/CAREGIVER AND THE CHILD/YOUTH. SERVICES SHALL BE OFFERED THAT PRESERVE THE CHILD/YOUTH'S PERMANENCY WITH THEIR FAMILY, CAREGIVER, KIN AND/OR COMMUNITY WHENEVER POSSIBLE. IF PLACEMENT IS REQUIRED, THE CHILD/YOUTH SHALL BE PLACED IN THE LEAST RESTRICTIVE SETTING, CONSISTENT WITH THE CHILD/YOUTH AND FAMILY'S ASSESSED NEEDS. WHEN THE CHILD/YOUTH CANNOT BE SAFELY RETURNED TO THE FAMILY FROM WHOM THEY WERE REMOVED, SERVICES SHALL BE PROVIDED TO ACHIEVE AN ALTERNATIVE PERMANENCY PLAN THAT PROVIDES FOR THE CHILD/YOUTH'S SAFETY AND WELL-BEING IN A TIMELY MANNER.
- B. ~~The county department shall complete a needs assessment for children or youth who do not require physical restriction but for whom immediate removal from the home appears necessary for his/her protection or the protection of others. The county department shall provide needed services, other than secure detention, such as temporary placement, crisis intervention, or in home services~~AT THE POINT OF CASE OPENING, COUNTY DEPARTMENTS SHALL ENSURE PERTINENT INFORMATION REGARDING CHILD/YOUTH SAFETY, PERMANENCY, AND WELL-BEING ARE TRANSFERRED TO ANY NEWLY ASSIGNED CASEWORKER. THIS SHALL BE ACCOMPLISHED THROUGH AT LEAST ONE OF THE FOLLOWING METHODS, BASED ON THE NATURE OF THE CASE AND THE CAPACITY OF THE COUNTY DEPARTMENT, AND SHALL BE DOCUMENTED IN THE SATE AUTOMATED CASE MANAGEMENT SYSTEM:

**Title of Proposed Rule: Program Area 4 Case Rules**

**CDHS Tracking #: 18-09-28-04**

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

1. FAMILY ENGAGEMENT OR OTHER EQUIVALENT REVIEW TEAM MEETING INVOLVING CASEWORKERS AND/OR SUPERVISORS, FAMILY AND COMMUNITY PROVIDERS; OR
2. STAFFING BETWEEN CASEWORKERS AND/OR SUPERVISORS.

~~C. A child or youth shall not be removed from the home without police protective custody or hold, a court order, or a signed voluntary placement agreement. Before or at the conclusion of the court-ordered placement (72 hours) or police hold (48 hours), the child or youth shall:~~

~~-1. Be returned home; or,~~

~~-2. Remain in court-ordered placement; or,~~

~~3. Continue in placement by virtue of a voluntary placement agreement signed by the parents/guardians.~~

~~D. The county department shall screen the child/youth for risk of sex trafficking in accordance with section 7.303.4 (A).~~

~~E. If at any point during the assessment, a county department becomes aware of an allegation that a child/youth is, or may be, a victim of sex trafficking, the county department shall:~~

~~1. Report immediately, and no later than twenty-four (24) hours from when the county department becomes aware, to the local law enforcement agency; and,~~

~~2. Document the details of the report to law enforcement in the state automated case management system.~~

\*\*\*\*\*

#### **7.204 CASE CONTACT REQUIREMENTS [Eff. 1/1/15]**

The primary purposes for case contacts shall be to assure child safety and well-being and move the case toward achieving identified treatment goals regardless of the reason the case is open. For Program Areas 4, 5, and 6, and in cases in which children and youth remain in the home or are placed out of the home, the county department shall have face-to-face and telephone contact with the children and youth, parents, and relevant collateral contacts as often as needed to assure the safety, permanency and well-being of the children.

Case contacts shall be documented in the state automated case management system. Minimum contact requirements are as follows:

**A. Program Areas 4, 5, and 6 In-Home Services**

The county department shall have at least monthly face-to-face contact with the child or youth. The county department shall have at least monthly face-to-face or telephone contact with the parent, parent surrogate or guardian, with face-to-face contact occurring at least every other month.

**B. Program Areas 4, 5, and 6 Out-of-Home Placement Services Concerning Children and Youth in Colorado**

**Title of Proposed Rule: Program Area 4 Case Rules**

**CDHS Tracking #: 18-09-28-04**

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

The primary caseworker, that caseworker's supervisor, or the designated visitation caseworker for each child or youth in out-of-home placement for whom the county department has responsibility shall have face-to-face contact with that child or youth at least once every calendar month.

The "designated visitation caseworker" is an individual assigned responsibility for visiting the child or youth. The visitation caseworker may be a caseworker employed by the county department or another county department; a caseworker or contract caseworker in another state; or, a professional within the state who meets the qualifications listed at Section 7.602 and training listed at Section 7.603 (12 CCR 2509-7).

The name and role of the visitation caseworker assigned responsibility for visiting the child or youth shall be recorded in the assigned screen of the state automated case management system and shall be updated if there is a change in the visitation caseworker. There shall be only one designated visitation caseworker for a child or youth at any one time.

Contact shall occur at a minimum of two face-to-face visits with the child or youth during the first thirty (30) days following the out-of-home placement, at least one of which shall be in the out-of-home placement, and a minimum of monthly face-to-face contact with the child or youth after the first month. A portion of every face-to-face contact shall occur out of the presence of the provider for the child or youth. No less than every other month, contact shall occur in the out-of-home placement where the child or youth resides and shall include visual assessment of where the child or youth sleeps.

The majority of monthly face-to-face contacts in a year shall occur in the child or youth's out-of-home placement. For children and youth in out-of-home placement, this is their place of residence. The child or youth shall be visited in his/her out-of-home placement during the first thirty (30) days of out-of-home placement and at least every other month while in out-of-home placement.

These requirements apply to children and youth for each month in which they spend more than half of the days of the month in out-of-home placement.

Children and youth designated as runaways who are in the county department's custody are included in the population of children and youth for whom the case contact requirements apply.

The caseworker who visits the child or youth shall have working knowledge of the case, including having conducted a recent review of contacts information in the state automated case management system prior to making a visit. The caseworker completing the visit shall record all contacts in the state automated case management system.

The designated visitation caseworker shall not have specific supervision responsibilities for the private placement facility where the child or youth is placed, nor shall the visitation caseworker be an employee of the placement facility where the child or youth is placed.

**C. Program Ares 4, 5, and 6 Out-of-Home Placement Services Out of Colorado Concerning Children and Youth**

The primary caseworker, that caseworker's supervisor, or the designated visitation caseworker or that caseworker's supervisor, for each child or youth in out-of-home placement out of Colorado shall have face-to-face contact with that child or youth at least once every calendar month.

For cases governed by the Interstate Compact on the Placement of Children (ICPC), the assigned or contracted caseworker in the state where the child or youth is placed may be the designated visitation caseworker. The Colorado caseworker assigned to the case shall document the designated visitation

**Title of Proposed Rule: Program Area 4 Case Rules**

**CDHS Tracking #: 18-09-28-04**

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

caseworker's visits in the state automated case management system if there is documentation in the case file from the designated visitation caseworker that describes the date, place, and content of the visit with the child or youth for cases governed by ICPC. If there is an out-of-state designated visitation caseworker, that person shall use other means than review of the state automated case management system to assure that he or she has current working knowledge of the case at the time visits are made to the child or youth. A written report on the contact shall be requested by the custodial agency.

**D. Program AreaS 4 AND 5 Out-of-Home Placement Concerning Parents**

While a child or youth remains in out-of-home placement, the county department shall have at least monthly FACE-TO-FACE contact with the parent, parent surrogate or guardian, ~~with face-to-face contact occurring at least every other month. Such contacts shall occur until a motion for termination of parental rights is filed, or until "Return Home" is no longer the primary permanency goal AS DESCRIBED IN 7.202.1(F).~~

**E. Program Areas ~~4~~ AND 6 Out-of-Home Services**

While a child or youth remains in out-of-home placement, the county department shall have at least monthly face-to-face or telephone contact with the parent, parent surrogate or guardian. Such contacts shall occur until a motion for termination of parental rights is filed, or until "Return Home" is no longer the primary permanency goal.

**F. Finalized Subsidized Adoption Services**

Contact shall occur every three (3) years through face-to-face, real-time video resources, telephone, electronic mail or mail.

**G. Other Groups**

For children or youth who are eligible for Home and Community Based Services or Home Health Care services, the contact requirements are a minimum of one face-to-face or telephone contact with the child or youth and family every six (6) months. At least one of the contacts annually must be face-to-face.

**H. Contact Exceptions**

If direct contact is impossible due to the child's location, the following information shall be documented in the state automated case management system indicating:

1. The case circumstances, including why the direct contact is not possible;
2. How the contact shall occur to possibly include ICPC, and/or courtesy supervision; and
3. How the county department shall monitor progress.

XX

<b>Title of Proposed Rule:</b> <b>Program Area 4 Case Rules</b>		
<b>CDHS Tracking #:</b> 18-09-28-04		
Office, Division, & Program: OCYF, DCW	Rule Author: Trevor Williams	Phone: 303-866-4539
		Email: Trevor.williams@state.co.us

# Notice of Proposed Rulemaking

**Tracking number**

2018-00564

**Department**

500,1008,2500 - Department of Human Services

**Agency**

2509 - Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

**CCR number**

12 CCR 2509-4

**Rule title**

CHILD WELFARE SERVICES

**Rulemaking Hearing****Date**

12/07/2018

**Time**

08:30 AM

**Location**

1575 Sherman Street

**Subjects and issues involved**

The passage of a number of legislative items in 2018 made changes to a number of terms currently defined in 7.000.2. This rule packet is to align the definitions in rule to those now in statute.

**Statutory authority**

26-1-107, C.R.S. (2015)  
26-1-109, C.R.S. (2015)  
26-1-111, C.R.S. (2015)  
26-1-111, C.R. S. (2015)

**Contact information****Name**

Matt Holtman

**Title**

Rule Author

**Telephone**

303-866-4897

**Email**

matt.holtman@state.co.us

**Title of Proposed Rule:** 7.000.2 Change definitions to align with statue

**CDHS Tracking #:** 18-06-29-01

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Matt Holtman, MSW, LCSW

Phone: 303-866-4897

Email:  
Matt.Holtman@state.co.us

## RULEMAKING PACKET

**Type of Rule:** *(complete a and b, below)*

a. ☒ Board ☐ Executive Director

b. ☒ Regular ☐ Emergency

**This package is submitted to State Board Administration as:** *(check all that apply)*

☒ AG Initial  
Review

☒ Initial Board  
Reading

☐ AG 2<sup>nd</sup> Review

☐ Second Board Reading  
/ Adoption

**This package contains the following types of rules:** *(check all that apply)*

Number

2 Amended Rules

0 New Rules

2 Repealed Rules

0 Reviewed Rules

What month is being requested for this rule to first go before the State Board?	11/2/2018
---	-----------

What date is being requested for this rule to be effective?	1/30/19
---	---------

Is this date legislatively required?	no
--------------------------------------	----

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

**Office Director Approval:** \_\_\_\_\_ **Date:** \_\_\_\_\_

### REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Comments:

Estimated Dates:	1st Board	11/2/18	2nd Board	12/7/18	Effective Date	1/30/19
		_____		_____		_____

Title of Proposed Rule: 7.000.2 Change definitions to align with statute

CDHS Tracking #: 18-06-29-01

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Matt Holtman, MSW, LCSW

Phone: 303-866-4897

Email:  
Matt.Holtman@state.co.us

### STATEMENT OF BASIS AND PURPOSE

#### **Summary of the basis and purpose for new rule or rule change.**

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. **1500 Char max***

The passage of a number of legislative items in 2018 made changes to a number of terms currently defined in 7.000.2. This rule packet is to align the definitions in rule to those now in statute.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

- ☐ to comply with state/federal law and/or  
☐ to preserve public health, safety and welfare

Justification for emergency:

#### **State Board Authority for Rule:**

Code	Description
26-1-107, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities.

**Program Authority for Rule:** *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
26-1-111, C.R. S. (2015)	State department to promulgate rules for public assistance and welfare activates.

Does the rule incorporate material by reference?

☐ Yes

☒ No

Does this rule repeat language found in statute?

☒ Yes

☐ No

If yes, please explain.

Definitions of terms were changed in statute and must be aligned with the definitions of the same terms in rule.



**Title of Proposed Rule:** 7.000.2 Change definitions to align with statue

---

**CDHS Tracking #:** 18-06-29-01

---

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Matt Holtman, MSW, LCSW

Phone: 303-866-4897

Email:  
Matt.Holtman@state.co.us

---

Title of Proposed Rule: **7.000.2 Change definitions to align with statute**

CDHS Tracking #: **18-06-29-01**

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Matt Holtman, MSW, LCSW

Phone: 303-866-4897

Email:  
Matt.Holtman@state.co.us

## **REGULATORY ANALYSIS**

### **1. List of groups impacted by this rule.**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

Children, youth and families in Colorado along with county child welfare caseworkers will benefit from this rule as there will be alignment of definitions with both statute and rule. This benefits groups impacted by this rule by reducing confusion of terms and phrases.

### **2. Describe the qualitative and quantitative impact.**

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

The average number of institutional assessments, statewide, in CY 2016 would be 24 assessments. The additional work to assess this population would equate to 2 assessments per month, statewide. Due to the change in definition of institutional abuse, state data was reviewed and indicated the average rate of child (ren)/youth age 0 to 17 experiencing maltreatment in out of home care in CY 2016 was 0.9%. Applying this rate to the 18 to 20 year old population, in either DCW or DYS, the average number of youth in this population who would experience abuse or neglect, statewide, in CY 2016 would be 5.2%. During CY 2016 there was a 21.5% substantiation rate.

### **3. Fiscal Impact**

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just “no impact” answer should include “no impact because....”***

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

There is no state fiscal impact, because the proposed changes serve only to align the statutory and regulatory definitions of the terms.

#### County Fiscal Impact

For the Institutional Abuse definition change there will be a minor county fiscal impact. The workload study assessed the time required to participate in RED Teams and complete an assessment was 6.3 hours/month. With an additional 2 new assessments, opened for a maximum of 60 days, the statewide fiscal impact would be \$19,656. The impact to each county based on their percentage of total assessments in CY 2016 is below. This information does not support any future request for additional FTE to counties.

Dually Involved Crossover Youth Definition: the definition itself added to rule should not drive a fiscal impact. However, the development of a plan could require an official published fiscal note, stating: “departments of human and social services, local law enforcement agencies, school districts, municipalities, and other local agencies that participate in local juvenile services planning committees will have additional workload to create the required planning processes under the bill. In addition, case

**Title of Proposed Rule:** 7.000.2 Change definitions to align with statute

**CDHS Tracking #:** 18-06-29-01

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Matt Holtman, MSW, LCSW

Phone: 303-866-4897

Email:  
Matt.Holtman@state.co.us

managers in county departments of human and social services may be required to spend additional time on cases involving dually identified crossover youths and may have additional costs for services under the locally developed plan. Local agencies may have some savings in staff time to the extent that consolidation of case management responsibilities for crossover youths reduces duplication of effort. It is assumed that counties will manage any additional costs within their current allocation of child welfare block grant funding and other revenue streams. In the event that Marijuana Tax Cash Fund money is appropriated for the purposes of this bill, local revenue will increase; however, the amount of any funding is dependent on future budget decisions of the General Assembly.”

For revisions to the Program Area 4 (PA4) and Beyond Control of Parent (BCOP) definitions, there should be no fiscal impact. The revision of the PA4 target group definition will allow county departments of human/social services to more clearly identify the families that should be provided services through that program area. There is no expectation that it will increase workloads or the number of youth accessing services through child welfare. The BCOP definition was developed in response to county request. This definition should not have a fiscal impact as these youth are already being served by counties.

#### Federal Fiscal Impact

While in the current environment, these activities may not qualify for federal reimbursement as this population is not currently included in Colorado’s Title IV-E State Plan, there are efforts in motion to modify the state plan to allow for county departments to seek reimbursement for providing services to the 18 -20 population.

Dually Involved Crossover Youth: no federal fiscal impacts, these youth, if placed out of home, are already reviewed for IV-E Eligibility.

#### Other Fiscal Impact (such as providers, local governments, etc.)

There is no other fiscal impact. These changes update language and add additional language for clarification.

Dually Involved Crossover Youth: the definition being added does not in itself cause a fiscal impact, however, the development of a plan could have a fiscal impact to local Juvenile Services Planning Committees, their members and ultimately what the plan indicates.

#### **4. Data Description**

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

**Title of Proposed Rule:** 7.000.2 Change definitions to align with statute

**CDHS Tracking #:** 18-06-29-01

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Matt Holtman, MSW, LCSW

Phone: 303-866-4897

Email:  
Matt.Holtman@state.co.us

### 5. Alternatives to this Rule-making

*Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just “no alternative” answer should include “no alternative because...”*

Crossover Youth was added to statute, C.R.S. 19-1-103, and adding it to rule would be helpful for the work with youth involved in both juvenile justice and child welfare.

Program Area 4's target definition required revision to rule due to the lack of consistency in application throughout the state, as the prior definition led to confusion. "Beyond Control of Parent" required a definition in rule as no current definition exists within rule or statute. As a result the term was interpreted in different ways throughout the state, leading to inconsistency in who was listed as "Beyond Control of Parent". In order to ensure consistency in rule and availability of services, rule was needed.

**Title of Proposed Rule:** 7.000.2 Change definitions to align with statue

**CDHS Tracking #:** 18-06-29-01

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Matt Holtman, MSW, LCSW

Phone: 303-866-4897

Email:  
Matt.Holtman@state.co.us

**Title of Proposed Rule:** 7.000.2 Change definitions to align with statute  
**CDHS Tracking #:** 18-06-29-01  
**Office, Division, & Program:** OCYF, DCW  
**Rule Author:** Matt Holtman, MSW, LCSW  
**Phone:** 303-866-4897  
**Email:** Matt.Holtman@state.co.us

### **OVERVIEW OF PROPOSED RULE**

Compare and/or contrast the content of the current regulation and the proposed change.



New



Revision



Technical Change

Repeal

Rule section Number	Type of Change/ Modification	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.000.1(B)	Revision	<p>Program for Youth in Conflict (PA 4)</p> <p>Program Area 4 services are provided to reduce or eliminate conflicts between youth and their family members or the community when those conflicts affect the youth's well-being, the normal functioning of the family or the well-being of the community. The focus of services shall be on alleviating conflicts, protecting the youth and the community, re-establishing family stability, or assisting the youth to emancipate successfully.</p> <p>Target groups for Program Area 4 are children and youth who are beyond the control of their parents or guardians; and, children and youth whose behavior is such that there is a likelihood that they may cause harm to themselves or to others or who have committed acts that could cause them to be adjudicated a delinquent child by the court.</p>	<p>Program for <del>YOUTH IN CONFLICT</del>-CHILDREN/YOUTH WHO ARE BEYOND CONTROL OF PARENTS (PA 4)</p> <p>Program Area 4 services are provided to reduce or eliminate conflicts between A CHILD/youth and their family members, WHICH MAY INCLUDE or the community, when those conflicts affect the CHILD/youth's well-being, the normal functioning of the family or the well-being of the community. The focus of services shall be on alleviating conflicts, protecting the CHILD/youth, FAMILY, and the community, re-establishing family stability, and/or assisting the CHILD/youth to emancipate successfully.</p> <p>Target groups for Program Area 4 are children and youth who are beyond the control of their parents or guardians, as defined in 7.000.2. <del>And, children and youth whose behavior is such that there is a likelihood that they may cause harm to themselves or to others or who have committed acts that could cause them to be adjudicated a delinquent child by the court.</del></p>	<p>Previously the title of this rule was "Program Area for Youth in Conflict." This created a focus of the youth, rather than the family system. Added child to all references to 'youth' at the request of the counties, and removed the reference that indicated Program Area 4 could serve children and/or youth who had conflicts only within the community. Cleaned up the second paragraph, as the second half is covered by the new definition of Beyond Control of Parent later in rule. Children are included to ensure counties are supported in serving 10-12 year olds who are in need of placement in accordance with House Bill 17-1207.</p>	PA4/Y outh Serv ices Task Group
7.000.2	New		"BEYOND CONTROL OF PARENT" MEANS A CHILD/YOUTH WHO IS THE CENTER OF A CONFLICT WHICH RESULTS IN THE HIGH LIKELIHOOD OF SUFFERING SUBSTANTIAL HARM AND/OR INJURY TO THE CHILD/YOUTH, FAMILY, AND/OR COMMUNITY.	Added a definition for Beyond Control of Parent in order to better clarify the issue that is being addressed through PA4 Cases and Assessments.	PA4/Y outh Serv ices Task Group

**Title of Proposed Rule:** 7.000.2 Change definitions to align with statute  
**CDHS Tracking #:** 18-06-29-01  
**Office, Division, & Program:** OCYF, DCW      **Rule Author:** Matt Holtman, MSW, LCSW      **Phone:** 303-866-4897  
**Email:** Matt.Holtman@state.co.us

7.000.2	Revision	"Facility" includes, but is not limited to: family child care homes, foster care homes, and any other facility subject to the Colorado "Child Care Licensing Act" and described in Section 26-6-102, C.R.S.	"FACILITY" MEANS A RESIDENTIAL CHILD CARE FACILITY, SPECIALIZED GROUP FACILITY, FOSTER CARE HOME, FAMILY CHILD CARE HOME, OR ANY OTHER FACILITY SUBJECT TO COLORADO "CHILD CARE LICENSING ACT", PART 1 OF ARTICLE 6 OF TITLE 26; NONCERTIFIED KINSHIP CARE PROVIDERS THAT PROVIDE CARE FOR CHILDREN WITH AN OPEN CHILD WELFARE CASE WHO ARE IN THE LEGAL CUSTODY OF A COUNTY DEPARTMENT; OR A FACILITY OR COMMUNITY PLACEMENT, AS DESCRIBED IN SECTION 19-2-403, C.R.S., FOR A JUVENILE COMMITTED TO THE CUSTODY OF THE DEPARTMENT OF HUMAN SERVICES. "FACILITY" DOES NOT INCLUDE ANY ADULT DETENTION OR CORRECTIONAL FACILITY.	This definition was changed in Statute	
7.000.2	Revision	"Institutional abuse" means any case of abuse and/or neglect that occurs in any public or private facility in the state that provides out of the home care for children. Institutional abuse shall not include abuse and/or neglect that occur in any public, private, or parochial school system, including any preschool operated in connection with said system; except that, to the extent the school system provides licensed child care before and/or after school, abuse that occurs while such services are provided shall be institutional abuse.	"INSTITUTIONAL ABUSE" INCLUDES AN ACT OR OMISSION THAT THREATENS THE LIFE, HEALTH, OR WELFARE OF A CHILD OR A PERSON WHO IS YOUNGER THAN TWENTY-ONE YEARS OF AGE WHO IS UNDER THE CONTINUING JURISDICTION OF THE COURT PURSUANT TO SECTION 19-1-103, C.R.S., IN THAT OCCURS IN ANY PUBLIC OR PRIVATE FACILITY IN THE STATE THAT PROVIDES CHILD CARE OUT OF THE HOME, SUPERVISION, OR MAINTENANCE.	This definition was changed in Statute	
7.000.2	New		"DUALY IDENTIFIED CROSSOVER YOUTH" MEANS YOUTH WHO ARE CURRENTLY INVOLVED IN THE JUVENILE JUSTICE SYSTEM AND THE CHILD WELFARE SYSTEM OR HAVE A HISTORY IN THE CHILD WELFARE SYSTEM THAT INCLUDES, BUT IS NOT LIMITED TO, A FAMILY ASSESSMENT RESPONSE SERVICE PLAN OR AN OPEN CASE.	This definition was added in Statute	

**Title of Proposed Rule:** 7.000.2 Change definitions to align with statute

**CDHS Tracking #:** 18-06-29-01

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Matt Holtman, MSW, LCSW

Phone: 303-866-4897

Email:  
Matt.Holtman@state.co.us

### **STAKEHOLDER COMMENT SUMMARY**

#### **Development**

*The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):*

Child Welfare Sub PAC and PAC have approved this rule package along with public comment teleconferences held on 10/24/18 and 10/26/18

#### **This Rule-Making Package**

*The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:*

Child Welfare Sub PAC and PAC have approved this rule package along with public comment teleconferences held on 10/24/18 and 10/26/18

#### **Other State Agencies**

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

☐ Yes ☒ No

If yes, who was contacted and what was their input?

#### **Sub-PAC**

Have these rules been reviewed by the appropriate Sub-PAC Committee?

☒ Yes ☐ No

Name of Sub-PAC	Child Welfare		
Date presented	9/6/2018		
What issues were raised?	N/A		
Vote Count	For	Against	Abstain
	All	None	
If not presented, explain why.			

#### **PAC**

Have these rules been approved by PAC?

☒ Yes ☐ No

Date presented	10/4/2018		
What issues were raised?	N/A		
Vote Count	For	Against	Abstain



**Title of Proposed Rule:** 7.000.2 Change definitions to align with statute

**CDHS Tracking #:** 18-06-29-01

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Matt Holtman, MSW, LCSW

Phone: 303-866-4897

Email:  
Matt.Holtman@state.co.us

If not presented, explain why.

All	None	

**Other Comments**

Comments were received from stakeholders on the proposed rules:

☒ Yes    ☐ No

*If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.*

**EXAMPLE OF RULES WITH  
SECRETARY OF STATE'S STYLE CODING  
REPLACE WITH YOUR OWN RULES**

(12 CCR 2509-4)

\*\*\*\*\* (BREAK BETWEEN SECTIONS)

[Note: Changes to rule text are identified as follows: deletions are shown as "strikethrough", additions are in "All Caps", and changes made between initial review and final adoption are in [brackets] or highlighted yellow]

7.000.1

B. Program for ~~Youth in Conflict~~ CHILDREN/YOUTH WHO ARE BEYOND CONTROL OF PARENTS (PA 4)

Program Area 4 services are provided to reduce or eliminate conflicts between CHILD/youth and their family members, WHICH MAY INCLUDE ~~of~~ the community, when those conflicts affect the CHILD/youth's well-being, the normal functioning of the family or the well-being of the community. The focus of services shall be on alleviating conflicts, protecting the CHILD/youth, FAMILY, and the community, re-establishing family stability, and/or assisting the youth to emancipate successfully.

Target groups for Program Area 4 are children ~~and~~ /youth who are beyond the control of their parents or guardians, AS DEFINED IN 7.000.2. ~~And, children and youth whose behavior is such that there is a likelihood that they may cause harm to themselves or to others or who have committed acts that could cause them to be adjudicated a delinquent child by the court.~~

7.000.2

"DUALY IDENTIFIED CROSSOVER YOUTH" MEANS YOUTH WHO ARE CURRENTLY INVOLVED IN THE JUVENILE JUSTICE SYSTEM AND THE CHILD WELFARE SYSTEM OR HAVE A HISTORY IN THE CHILD WELFARE SYSTEM THAT INCLUDES, BUT IS NOT LIMITED TO, A FAMILY ASSESSMENT RESPONSE SERVICE PLAN OR AN OPEN CASE.

"BEYOND CONTROL OF PARENT" MEANS A CHILD/YOUTH WHO IS THE CENTER OF A CONFLICT WHICH RESULTS IN THE HIGH LIKELIHOOD OF SUFFERING SUBSTANTIAL HARM AND/OR INJURY TO THE CHILD/YOUTH, FAMILY, AND/OR COMMUNITY.

**Title of Proposed Rule:** 7.000.2 Change definitions to align with statute

**CDHS Tracking #:** 18-06-29-01

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Matt Holtman, MSW, LCSW

Phone: 303-866-4897

Email:  
Matt.Holtman@state.co.us

~~"Facility" includes, but is not limited to: family child care homes, foster care homes, and any other facility subject to the Colorado "Child Care Licensing Act" and described in Section 26-6-102, C.R.S.~~

"FACILITY" MEANS A RESIDENTIAL CHILD CARE FACILITY, SPECIALIZED GROUP FACILITY, FOSTER CARE HOME, FAMILY CHILD CARE HOME, OR ANY OTHER FACILITY SUBJECT TO COLORADO "CHILD CARE LICENSING ACT", PART 1 OF ARTICLE 6 OF TITLE 26; NONCERTIFIED KINSHIP CARE PROVIDERS THAT PROVIDE CARE FOR CHILDREN WITH AN OPEN CHILD WELFARE CASE WHO ARE IN THE LEGAL CUSTODY OF A COUNTY DEPARTMENT; OR A FACILITY OR COMMUNITY PLACEMENT, AS DESCRIBED IN SECTION 19-2-403, C.R.S., FOR A JUVENILE COMMITTED TO THE CUSTODY OF THE DEPARTMENT OF HUMAN SERVICES. "FACILITY" DOES NOT INCLUDE ANY ADULT DETENTION OR CORRECTIONAL FACILITY.

~~"Institutional abuse" means any case of abuse and/or neglect that occurs in any public or private facility in the state that provides out of the home care for children. Institutional abuse shall not include abuse and/or neglect that occur in any public, private, or parochial school system, including any preschool operated in connection with said system; except that, to the extent the school system provides licensed child care before and/or after school, abuse that occurs while such services are provided shall be institutional abuse.~~

"INSTITUTIONAL ABUSE" INCLUDES AN ACT OR OMISSION THAT THREATENS THE LIFE, HEALTH, OR WELFARE OF A CHILD OR A PERSON WHO IS YOUNGER THAN TWENTY-ONE YEARS OF AGE WHO IS UNDER THE CONTINUING JURISDICTION OF THE COURT PURSUANT TO SECTION 19-1-103, C.R.S., IN THAT OCCURS IN ANY PUBLIC OR PRIVATE FACILITY IN THE STATE THAT PROVIDES CHILD CARE OUT OF THE HOME, SUPERVISION, OR MAINTENANCE.

# Notice of Proposed Rulemaking

**Tracking number**

2018-00604

**Department**

500,1008,2500 - Department of Human Services

**Agency**

2509 - Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

**CCR number**

12 CCR 2509-4

**Rule title**

CHILD WELFARE SERVICES

**Rulemaking Hearing****Date**

12/07/2018

**Time**

08:30 AM

**Location**

1575 Sherman Street

**Subjects and issues involved**

Federal law as, it relates to the development of a plan that will ensure youth who enter foster care are prepared for adulthood, was revised in 2015 to remove all of the Independent Living language. This technical fix will better align the name of this plan with federal law, and clean up confusing language regarding the timing requirements.

**Statutory authority**

26-1-107, C.R.S. (2015), 26-1-109, C.R.S. (2015), 26-1-111, C.R.S. (2015), 26-1-111, C.R.S. (2015)

**Contact information****Name**

Trevor Williams

**Title**

Rule Author

**Telephone**

303-866-4539

**Email**

trevor.williams@state.co.us

**Title of Proposed Rule:** Program Area 4 and ILP Revisions

**CDHS Tracking #:** 18-09-28-03

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

## RULEMAKING PACKET

**Type of Rule:** *(complete a and b, below)*

a. ☒ Board ☐ Executive Director

b. ☒ Regular ☐ Emergency

**This package is submitted to State Board Administration as:** *(check all that apply)*

☒ AG Initial  
Review

☐ Initial Board  
Reading

☐ AG 2<sup>nd</sup> Review

☐ Second Board Reading  
/ Adoption

**This package contains the following types of rules:** *(check all that apply)*

Number

5 Amended Rules

0 New Rules

0 Repealed Rules

0 Reviewed Rules

What month is being requested for this rule to first go before the State Board?	1/2019
---	--------

What date is being requested for this rule to be effective?	3/1/19
---	--------

Is this date legislatively required?	no
--------------------------------------	----

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

**Office Director Approval:** \_\_\_\_\_ **Date:** \_\_\_\_\_

### REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Comments:

Estimated Dates:	1st Board _____	2nd Board _____	Effective Date _____
---------------------	--------------------	--------------------	-------------------------

**Title of Proposed Rule:** Program Area 4 and ILP Revisions

**CDHS Tracking #:** 18-09-28-03

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

### STATEMENT OF BASIS AND PURPOSE

**Summary of the basis and purpose for new rule or rule change.**

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. **1500 Char max***

Federal law as, it relates to the development of a plan that will ensure youth who enter foster care are prepared for adulthood, was revised in 2015 to remove all of the "Independent Living" language. This technical fix will better align the name of this plan with federal law, and clean up confusing language regarding the timing requirements.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

- ☐ to comply with state/federal law and/or
- ☐ to preserve public health, safety and welfare

Justification for emergency:

**State Board Authority for Rule:**

Code	Description
26-1-107, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities

**Program Authority for Rule:** *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
26-1-111, C.R. S. (2015)	State department to promulgate rules for public assistance and welfare activities

Does the rule incorporate material by reference?

☐ Yes

☒ No

Does this rule repeat language found in statute?

☐ Yes

☒ No

If yes, please explain.

n/a

Title of Proposed Rule: **Program Area 4 and ILP Revisions**

CDHS Tracking #: **18-09-28-03**

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

## **REGULATORY ANALYSIS**

### **1. List of groups impacted by this rule.**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

Children, Youth and Families in Colorado, along with County Child Welfare caseworkers, will benefit from this rule. The changes will change the name from 'Independent Living Plan' to 'Road Map to Success' to better describe the purpose of the plan. Additionally, the rules will fix the language describing when the plan needs to be completed.

### **2. Describe the qualitative and quantitative impact.**

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

This rule will impact all youth 14 or older in foster care. The short term impacts will be increased compliance with rates of completion. The long term impact will be better and more developmentally appropriate plans for youth in foster care.

### **3. Fiscal Impact**

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just "no impact" answer should include "no impact because...."***

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

There is no state fiscal impact, because the changes included will be managed through current staff and any modifications to training will be small and will not require the development of new training.

County Fiscal Impact

These changes will have no fiscal impact as they do not create or remove any requirements.

Federal Fiscal Impact

These changes will have no fiscal impact as they do not create or remove any requirements.

Other Fiscal Impact (such as providers, local governments, etc.)

There is no other fiscal impact, because these changes will primarily impact child welfare practice without adding to workloads.

**Title of Proposed Rule:** Program Area 4 and ILP Revisions

**CDHS Tracking #:** 18-09-28-03

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

#### **4. Data Description**

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

Focus groups were conducted with youth who had experienced foster care, to determine language that would be the most meaningful to them.

#### **5. Alternatives to this Rule-making**

*Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just “no alternative” answer should include “no alternative because...”*

The Division of Child Welfare issued an Operation Memo clarifying the timing requirements; however, that memo will expire and the rule needs to be fixed to reduce confusion for county staff and ensure compliance with the federal requirement.



**Title of Proposed Rule:** **Program Area 4 and ILP Revisions**

---

**CDHS Tracking #:** 18-09-28-03

---

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

---

## OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

New
  Revision
  Technical Change
  Repeal
  Repeal

Rule section Number	Type of Change/ Modification	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.301.21(C)	Technical Change	For youth fourteen (14) years of age and over in out-of-home placement, the plan for transition to independent living/emancipation shall be completed within sixty (60) calendar days of the youth's fourteenth (14 <sup>th</sup> ) birthday or of case opening.	For youth fourteen (14) years of age and over in out-of-home placement, the plan for transition to independent living/emancipation shall be completed within sixty (60) calendar days of the youth's fourteenth (14 <sup>th</sup> ) birthday or of case opening. ROAD MAP TO SUCCESS SHALL BE COMPLETED WITHIN THE LATER OF: 1. SIXTY (60) CALENDAR DAYS OF THE YOUTH REACHING THEIR FOURTEENTH (14 <sup>TH</sup> ) BIRTHDAY; OR 2. SIXTY (60) CALENDAR DAYS OF THE YOUTH ENTERING OUT OF HOME PLACEMENT.	This change clarifies when the plan is required. Case opening is not a consideration, and the current language could lead a county to believing the plan is required when it is not.	PA4/Youth Services Task Group
7.305	Revision	<b>EMANCIPATION SERVICES</b>	<b>EMANCIPATION YOUTH SERVICES</b>	Clarifies the purpose of this section is not to promote emancipation, rather to support youth experiencing foster care in receiving developmentally appropriate services.	PA4/Youth Services Task Group
7.305.1(C)	Technical Change	Following assessment, the Independent Living Plan (ILP) shall be developed in consultation with the youth, caseworker, care provider(s), and, at the option of the youth, up to two (2) other significant persons chosen by the youth who are not the foster parent or caseworker for the youth and documented in the FSP in the state automated system. If the county department of human or social services has good cause to believe an individual selected by the youth will not act in his or her best interest, the planning team may designate another advocate for the youth.	Following assessment, the Independent Living Plan (ILP) ROADMAP TO SUCCESS (RTS) shall be developed in consultation with the youth, caseworker, care provider(s), and, at the option of the youth, up to two (2) other significant persons chosen by the youth who are not the foster parent or caseworker for the youth and documented in the FSP in the state automated system. If the county department of human or social services has good cause to believe an individual selected by the youth will not act in his or her best interest, the planning team may designate another advocate for the youth.	Revised the Title to better reflect the needs and intent of the plan and to better engage youth.	Youth focus groups, PA4/Youth Services Task Group
7.305.42 (C) (2)	Technical Change	An Independent Living Plan developed on or prior to the eighteenth (18th) birthday.	An Independent Living Plan ROADMAP TO SUCCESS developed on or prior to the eighteenth (18th) birthday.	Revised the Title to better reflect the needs and intent of the plan and to better engage youth.	Youth focus groups, PA4/Youth Services Task Group
7.305.42(A)	Technical Change	Meet Program Area 4, 5, or 6 target group eligibility requirements, in a non-secure setting, with the Division of Youth Corrections, or meet requirements for ongoing Chafee services in the state where the youth emancipated, was adopted or entered Relative Guardianship, if other than Colorado.	Meet Program Area 4, 5, or 6 target group eligibility requirements, in a non-secure setting, with the Division of Youth Corrections SERVICES, or meet requirements for ongoing Chafee services in the state where the youth emancipated, was adopted or entered Relative Guardianship, if other than Colorado.	Corrected the name of the Division of Youth Services	

**Title of Proposed Rule: Program Area 4 and ILP Revisions****CDHS Tracking #:** 18-09-28-03Office, Division, & Program:  
OCYF, DCWRule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us**STAKEHOLDER COMMENT SUMMARY****Development**

*The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):*

In October of 2016, a PAC and Child Welfare Sub-PAC authorized task group began meeting to recommend revisions to rules related to PA4. This group's membership included representatives from large, medium, and small counties; county attorneys; the Office of the Child's Representative (OCR); Senate Bill 94; Runaway and Homeless Youth Providers; and a provider network. Judicial was invited but did not participate. Meetings were held over the course of nearly two years and the group recommended this rule package unanimously. The new recommended name for the independent living plan came from feedback provided by youth who had experienced foster care.

**This Rule-Making Package**

*The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:*

Members of the PA4 task group were notified that these rules would be proposed at the final task group meeting.

**Other State Agencies**

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

☐ Yes ☒ No

If yes, who was contacted and what was their input?

**Sub-PAC**

Have these rules been reviewed by the appropriate Sub-PAC Committee?

☐ Yes ☒ No

Name of Sub-PAC	Child Welfare		
Date presented	10/4/2018		
What issues were raised?	No issues were raised. These rules passed unanimously.		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	Unanimous	0	0
If not presented, explain why.			

**PAC**

Have these rules been approved by PAC?

☐ Yes ☒ No

Date presented			
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>

**Title of Proposed Rule:** Program Area 4 and ILP Revisions

**CDHS Tracking #:** 18-09-28-03

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

If not presented, explain why.

**Other Comments**

Comments were received from stakeholders on the proposed rules:

☒

Yes

☐

No

*If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.*

**EXAMPLE OF RULES WITH  
SECRETARY OF STATE'S STYLE CODING  
REPLACE WITH YOUR OWN RULES**

(12 CCR 2509-4)

\*\*\*\*\* (BREAK BETWEEN SECTIONS)

[Note: Changes to rule text are identified as follows: deletions are shown as "strikethrough", additions are in "All Caps", and changes made between initial review and final adoption are in [brackets] or highlighted yellow]

**7.301.21 Family Services Plan Timing Requirements**

The Family Service Plan document must be completed:

- A. Within sixty (60) calendar days of the referral date in the automated case management system for children in their own homes, including Core Services program cases in which the children are not in out-of-home placement. There may be one Family Services Plan for the family in these cases.
- B. Within sixty (60) calendar days of the referral date in the automated case management system for children in out-of-home placement, including those cases in which the children are receiving Core Services. There may be one Family Services Plan for the family; however, discrete sections in the treatment plan and in the placement information are required for each child in placement.
- C. For youth fourteen (14) years of age and over in out-of-home placement, the ~~plan for transition to independent living/emancipation shall be completed within sixty (60) calendar days of the youth's fourteenth (14th) birthday or of case opening~~ROAD MAP TO SUCCESS SHALL BE COMPLETED WITHIN:
  - 1. SIXTY (60) CALENDAR DAYS OF THE YOUTH REACHING THEIR FOURTEENTH (14TH) BIRTHDAY; OR,
  - 2. SIXTY (60) CALENDAR DAYS OF THE YOUTH ENTERING OUT OF HOME PLACEMENT.

\*\*\*\*\*

**7.305.2 SPECIFIC PROCEDURES**

- A. The county department shall assess all youth in foster care who have reached the age of fourteen (14) for independent living services and complete the independent living section of the Family Services Plan (FSP). This assessment and planning for independent living is required regardless of the specified permanency goal of the case plan.
- B. The county department's assessment shall include documentation of:
  - 1. The youth's capacity for self-sufficiency and self-support by reviewing daily living skills.

**Title of Proposed Rule: Program Area 4 and ILP Revisions**

**CDHS Tracking #: 18-09-28-03**

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

2. An evaluation of individual, family, community, and financial support resources available to promote emancipation or semi-independent living.
- C. Following assessment, the Independent Living Plan (ILP) ROADMAP TO SUCCESS (RTS) shall be developed in consultation with the youth, caseworker, care provider(s), and, at the option of the youth, up to two (2) other significant persons chosen by the youth who are not the foster parent or caseworker for the youth and documented in the FSP in the state automated system. If the county department of human or social services has good cause to believe an individual selected by the youth will not act in his or her best interest, the planning team may designate another advocate for the youth.
1. The case plan and court report following a staffing or meeting shall describe the services to help the youth transition to successful adulthood including, but not limited to, participation in on-going opportunities to engage in age and developmentally appropriate activities, and, if the youth is pregnant and/or a parent, the supports provided to the youth.
  2. The case plan shall document the rights of the youth to education, health, visitation, court participation, the right to stay safe and avoid exploitation, and the right to receive a credit report annually. A signed acknowledgement that the youth was provided a copy of these rights and that they were explained in an age or developmentally appropriate way shall be included in the case plan.
- D. Criteria and Use of Independent Living Arrangements for youth ages 16 to 21
- The county department may make an independent living arrangement for youth ages 16 to 21 when the following criteria have been met:
1. The county department has legal authority for placement.
  2. Placement in the independent living arrangement follows a period in out-of-home care or a period in an approved core services program provided or purchased by the county.
  3. The county department shall establish a written policy for the use of the independent living arrangement stipend. The policy shall address the following:
    - a. Independent living arrangement funds shall be determined according to goals documented in the case plan and a current self-sufficiency budget developed in consultation with the youth.
    - b. Decisions to withhold independent living arrangement funds must be consistent with the previously mentioned treatment goals and withheld according to defined guidelines found in the county policy.
    - c. Timely and adequate written appeal and notification procedures for youth whose independent living arrangement funds are withheld.

**Title of Proposed Rule: Program Area 4 and ILP Revisions**

**CDHS Tracking #: 18-09-28-03**

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Trevor Williams

Phone: 303-866-4539

Email:  
Trevor.williams@state.co.us

4. A signed copy of the independent living arrangement contract and a signed acknowledgement that the youth was provided a copy of the county guidelines, and that both documents were explained in an age or developmentally appropriate way, shall be included in the case file.

E. Free Annual Credit Record Report for Youth Fourteen (14) Years of Age and Older in Foster Care

The following steps shall be taken:

1. The county department shall obtain free annual credit report information from the three credit reporting agencies designated by the Department for youth who are in foster care and are at least fourteen (14) years of age, and provide the information to the youth and Guardian ad Litem (GAL);
2. If the youth objects to obtaining the credit report, the county department shall inform the court and request that the court issue an order authorizing the county to obtain the credit report.
3. The county department shall maintain a copy of each credit report in the case record; and,
4. Should the annual report show evidence of any inaccuracies, the county department shall inform the court of the inaccuracies, refer the youth to a Colorado Department of Human Services approved governmental or non-profit entity to resolve the inaccuracies, and inform the GAL of the referral.

F. Emancipation Transition Plan

The youth, county department caseworker, provider(s), and other representatives of the youth as appropriate, shall jointly develop a detailed, formal emancipation transition plan a minimum of ninety (90) business days prior to the projected emancipation date of the youth. The plan shall include, but not be limited to, the following:

1. Assurance that the plan meets the specific self-sufficiency/cost of living standard in the county or state where the youth plans to reside.
2. An individualized written assessment used to develop the plan that is as detailed as the youth elects, and is signed and dated by the youth and the parties that developed the plan.
3. Personalization at the direction of the youth to meet the individual emancipation needs in order to help prevent homelessness.
4. Copies of verifiable vital documents required in Section 7.305.5.
5. Specific options for:
  - a. Housing,
  - b. Health insurance and health care decision-making information,
  - c. Education,
  - d. Local opportunities for safe mentors,
  - e. Continuing after-care support services, and

<b>Title of Proposed Rule: Program Area 4 and ILP Revisions</b>		
<b>CDHS Tracking #:</b> 18-09-28-03		
Office, Division, & Program: OCYF, DCW	Rule Author: Trevor Williams	Phone: 303-866-4539
		Email: Trevor.williams@state.co.us

- f. Work force supports and employment services.
- 6. The plan shall be documented in the State Department's automated system in the Family Services Plan, and a copy given to the youth free of charge.

\*\*\*\*\*

#### 7.305.42 Eligibility

To be eligible for Chafee Foster Care Independence Program (CFCIP) services, the youth must:

- A. Meet Program Area 4, 5, or 6 target group eligibility requirements, in a non-secure setting, with the Division of Youth CorrectionsSERVICES, or meet requirements for ongoing Chafee services in the state where the youth emancipated, was adopted or entered Relative Guardianship, if other than Colorado.
- B. Be at risk of aging out of foster care which includes youth:
  - 1. Currently in out-of-home care, fourteen (14) up to twenty-one (21) years of age, and in out-of-home placement for a minimum of six (6) months if under age seventeen (17). Consecutive months are not required;
  - 2. Sixteen (16) to twenty-one (21) years of age, who meet requirements for Relative Guardianship Assistance and entered Relative Guardianship on or after age sixteen (16);
  - 3. Sixteen (16) to twenty-one (21) years of age, who meet requirements for Adoption Assistance and entered Adoption Assistance on or after age sixteen (16);
  - 4. Eighteen (18) to twenty-one (21) years of age, who were in out-of-home care on or after their eighteenth (18th) birthday.
- C. Have a current Family Services Plan in the State Department's automated system. For youth who emancipated, were adopted or entered Relative Guardianship in another state, have documented verification of eligibility from the state where the youth's case was closed. For youth who entered into a Relative Guardianship or Adoption Assistance agreement at age sixteen (16) or older, the following may be used in lieu of a Family Services Plan:
  - 1. The Relative Guardianship or Adoption Assistance agreement; or,
  - 2. An Independent Living Plan ROAD MAP TO SUCCESS developed on or prior to the eighteenth (18th) birthday.
- D. Participate on a voluntary basis. The youth may decide to refuse services, but shall be entitled to reconsider his or her choice and receive services at a later date.
- E. Follow the plan developed with the youth and the county department regarding participation in the Chafee Foster Care Independence Program.

XX



# Notice of Proposed Rulemaking

**Tracking number**

2018-00571

**Department**

500,1008,2500 - Department of Human Services

**Agency**

2512 - State Board of Human Services (Volume 12; Special Projects)

**CCR number**

12 CCR 2512-2

**Rule title**

RULE MANUAL VOLUME 12, SPECIAL PROJECTS

**Rulemaking Hearing****Date**

12/07/2018

**Time**

08:30 AM

**Location**

1575 Sherman Street

**Subjects and issues involved**

Programs funded wholly or in part by DVP shall ensure full compliance with the requirements of the Federal Department of Health and Human Services Administration for Children and Families, 45 CFR part 1370 (2017).

**Statutory authority**

26-1-107, C.R.S. (2015)  
26-1-109, C.R.S. (2015)  
26-1-111, C.R.S. (2015)  
26-7.5-104 (2), C.R.S (2017)

**Contact information****Name**

Brooke Ely Milen

**Title**

Rule Author

**Telephone**

303-866-3321

**Email**

brooke.elymilen@state.co.us

**Title of Proposed Rule: Incorporation by Reference – Domestic Violence Advocacy Services**

**CDHS Tracking #:** 18-08-20-01

**Office, Division, & Program:** Rule Author: Brooke Ely-Milen

**Phone:** (303) 866-3321

**E-Mail:**

[Brooke.ElyMilen@state.co.us](mailto:Brooke.ElyMilen@state.co.us)

**RULEMAKING PACKET**

**Type of Rule:** *(complete a and b, below)*

a. ☒ Board ☐ Executive Director

b. ☒ Regular ☐ Emergency

**This package is submitted to State Board Administration as:** *(check all that apply)*

☐ AG Initial Review

☐ Initial Board Reading

☐ AG 2<sup>nd</sup> Review

☒ Second Board Reading / Adoption

**This package contains the following types of rules:** *(check all that apply)*

Number

1 Amended Rules

0 New Rules

0 Repealed Rules

0 Reviewed Rules

What month is being requested for this rule to first go before the State Board?	November 2018
---	---------------

What date is being requested for this rule to be effective?	November 1, 2018
---	------------------

Is this date legislatively required?	YES
--------------------------------------	-----

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

**Office Director Approval:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION**

Comments:

Estimated Dates:	1st Board _____	2nd Board _____	Effective Date _____
------------------	-----------------	-----------------	----------------------

**Title of Proposed Rule: Incorporation by Reference – Domestic Violence Advocacy Services**

**CDHS Tracking #:** 18-08-20-01

**Office, Division, & Program:** Rule Author: Brooke Ely-Milen

**Phone:** (303) 866-3321

**E-Mail:**

[Brooke.ElyMilen@state.co.us](mailto:Brooke.ElyMilen@state.co.us)

**STATEMENT OF BASIS AND PURPOSE**

**Summary of the basis and purpose for new rule or rule change.**

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. **1500 Char max***

To amend a technical error regarding an incorporation by reference.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

☐  
☐

to comply with state/federal law and/or

to preserve public health, safety and welfare

Justification for emergency:

**State Board Authority for Rule:**

Code	Description
26-1-107, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities.

**Program Authority for Rule:** *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
26-7.5-104 (2), C.R.S (2017)	State department shall establish and enforce rules for all domestic abuse programs established pursuant to this article

Does the rule incorporate material by reference?

☐  
☐

Yes

Yes

☒  
☒

No

No

Does this rule repeat language found in statute?

If yes, please explain.

**Title of Proposed Rule: Incorporation by Reference – Domestic Violence Advocacy Services**

**CDHS Tracking #:** 18-08-20-01

**Office, Division, & Program:** Rule Author: Brooke Ely-Milen

**Phone:** (303) 866-3321

**E-Mail:**

[Brooke.ElyMilen@state.co.us](mailto:Brooke.ElyMilen@state.co.us)

**REGULATORY ANALYSIS**

**1. List of groups impacted by this rule.**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

Although the Domestic Violence Program (DVP) rules impact organizations funded by DVP and survivors of domestic violence who receive services, this rule change is not anticipated to have any adverse impact or direct benefit because it is correcting a technical error.

**2. Describe the qualitative and quantitative impact.**

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

None anticipated because it is correcting a technical error.

**3. Fiscal Impact**

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just “no impact” answer should include “no impact because....”***

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

None

County Fiscal Impact

None

Federal Fiscal Impact

None

Other Fiscal Impact (such as providers, local governments, etc.)

None

**4. Data Description**

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

None needed.

**5. Alternatives to this Rule-making**

*Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. **Answer should NEVER be just “no alternative” answer should include “no alternative because...”***

**Title of Proposed Rule:** Incorporation by Reference – Domestic Violence Advocacy Services

**CDHS Tracking #:** 18-08-20-01

**Office, Division, & Program:** Rule Author: Brooke Ely-Milen

Phone: (303) 866-3321

E-Mail:

[Brooke.ElyMilen@state.co.us](mailto:Brooke.ElyMilen@state.co.us)

No alternative other than leaving the error in rule.

**Title of Proposed Rule: Incorporation by Reference – Domestic Violence Advocacy Services**

**CDHS Tracking #:** 18-08-20-01

Office, Division, & Program: Rule Author: Brooke Ely-Milen

Phone: (303) 866-3321

E-Mail:

[Brooke.ElyMilen@state.co.us](mailto:Brooke.ElyMilen@state.co.us)

**OVERVIEW OF PROPOSED RULE**

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
12.202.3.D	Incorrect incorporation by reference	Programs funded wholly or in part by DVP shall ensure full compliance with the requirements of the federal department of health and human services administration for children and families, 45 CFR Part 1370. If a funded program wishes to provide sex segregated or sex-specific programming, they shall submit a written plan to be approved by DVP, which outlines the following:	Programs funded wholly or in part by DVP shall ensure full compliance with the requirements of the federal department of health and human services administration for children and families, 45 CFR Part 1370 (2017). No later editions or amendments are incorporated. These regulations are available at no cost from the U.S Health Resources and Services Administration, Office of Communications 5600 Fishers Lane, Rockville, MD 20857 or at <a href="https://www.ecfr.gov/">https://www.ecfr.gov/</a> . These regulations are also available for public inspection and copying at the Colorado Department of Human Services, Office of Community Partnerships, 1575 Sherman St, Denver, CO 80203, during regular business hours. If a funded program wishes to provide sex segregated or sex-specific programming, they shall submit a written plan to be approved by DVP, which outlines the following:	Correct citation for incorporation by reference	None

**Title of Proposed Rule: Incorporation by Reference – Domestic Violence Advocacy Services**

**CDHS Tracking #:** 18-08-20-01

**Office, Division, & Program:** Rule Author: Brooke Ely-Milen

**Phone:** (303) 866-3321

**E-Mail:**

[Brooke.ElyMilen@state.co.us](mailto:Brooke.ElyMilen@state.co.us)

**STAKEHOLDER COMMENT SUMMARY**

**Development**

*The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):*

None because this is correcting a technical error.

**This Rule-Making Package**

*The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:*

The Domestic Violence Program (DVP) contacted all of the programs that currently receive funding from DVP.

**Other State Agencies**

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

☐ Yes ☒ No

If yes, who was contacted and what was their input?

**Sub-PAC**

Have these rules been reviewed by the appropriate Sub-PAC Committee?

☐ Yes ☒ No

Name of Sub-PAC

Date presented

What issues were raised?

Vote Count

<i>For</i>	<i>Against</i>	<i>Abstain</i>
DVP has requested permission not to present these rules at PAC or sub-PAC because the modification is correcting an error.		

If not presented, explain why.

**PAC**

Have these rules been approved by PAC?

☐ Yes ☒ No

Date presented

What issues were raised?

Vote Count

<i>For</i>	<i>Against</i>	<i>Abstain</i>

If not presented, explain why.

**Other Comments**

Comments were received from stakeholders on the proposed rules:

☐ Yes ☒ No

**Title of Proposed Rule: Incorporation by Reference – Domestic Violence Advocacy Services**

**CDHS Tracking #: 18-08-20-01**

Office, Division, & Program: Rule Author: Brooke Ely-Milen

Phone: (303) 866-3321

E-Mail:

[Brooke.ElyMilen@state.co.us](mailto:Brooke.ElyMilen@state.co.us)

---

*If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.*



## 12 CCR 2512-2

### 12.202.3. D

Programs funded wholly or in part by DVP shall ensure full compliance with the requirements of the Federal Department of Health and Human Services Administration for Children and Families, 45 CFR part 1370 (2017). No later editions or amendments are incorporated. These regulations are available at no cost from the U.S Health Resources and Services Administration, Office of Communications 5600 Fishers Lane, Rockville, MD 20857 or at <https://www.ecfr.gov/>. These regulations are also available for public inspection and copying at the Colorado Department of Human Services, Office of Community Partnerships, 1575 Sherman St., Denver, CO 80203, during regular business hours. If a funded program wishes to provide sex segregated or sex-specific programming, they shall submit a written plan to be approved by DVP, which outlines the following:

## **Permanent Rules Adopted**

**Department**

Department of Education

**Agency**

Colorado State Board of Education

**CCR number**

1 CCR 301-35

**Rule title**

1 CCR 301-35 RULES FOR THE ADMINISTRATION OF THE WAIVER OF STATUTE  
AND RULE 1 - eff 11/30/2018

**Effective date**

11/30/2018

## DEPARTMENT OF EDUCATION

### Colorado State Board of Education

## RULES FOR THE ADMINISTRATION OF THE WAIVER OF STATUTE AND

### RULE 1 CCR 301-35

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

---

#### 1.00 General Requirements

##### 1.0 Definitions

- 1.1 "Charter School" means a public school that enters into a charter contract pursuant to Article 30.5 of Title 22.
- 1.2 "Institute Charter School" means a charter school authorized pursuant to Article 30.5 of Title 22.
- 1.3 "State Board" means the state board of education.
- 1.4 "Automatic Waiver" means the waiver of a state statute or state board rule:
  - 1.4(a) That is included on the list of automatic waivers adopted by rule of the state board;
  - 1.4(b) That is available to each charter school, including an Institute Charter School, and is valid for the initial or subsequent renewal, term of the charter contract; and
  - 1.4(c) For which a charter school, including an Institute Charter School, is not required to submit a statement that specifies the manner in which the charter school intends to comply with the intent of the automatically waived state statute or state board rule.

#### 2.00 Waiver Requests by School Districts

##### 2.1 Legal Standard for granting waivers

The State Board shall grant waivers to school districts when it determines that such waivers would enhance educational opportunity and quality within the school district and when the costs to the school district of complying with the requirements for which the waiver is requested significantly limit educational opportunities within the school district

##### 2.2 Duration/Revocation

Any waiver granted by the State Board of Education to a school district (not involving a charter school) shall continue **indefinitely** unless:

- 2.2(a) The school district board of education that holds the waiver by resolution requests revocation of the waiver; or
- 2.2(b) The State Board receives evidence that constitutes good and just cause for revocation of the waiver, as determined by the State Board.

**2.3 Pre-Application Process**

- 2.3(a) Prior to submitting an application for a waiver, a school district board of education, in a public meeting including a public hearing, shall adopt a resolution stating the board's intent to apply for a waiver and specifying the statutes and rules for which the board will request waivers.
- 2.3(b) The school district board of education shall post notice of such public meeting in three public places within the school district for a period of not less than thirty calendar days prior to such meeting, giving the time and location of such meeting and a description of the waiver request, and, if a newspaper is published within the county, shall publish such notice once each week for at least four weeks prior to the meeting in such newspaper.
- 2.3(c) At least sixty days prior to such public meeting and hearing, the school district board of education shall meet with the school district accountability committee to consult with the committee concerning the intent to seek the waiver(s).

**2.4 Application Process**

Waiver requests by school districts shall be submitted as follows:

- 2.4(a) Written requests for waivers shall be submitted electronically to the State Board of Education by emailing [state.board@cde.state.co.us](mailto:state.board@cde.state.co.us) and electronically copying the Schools of Choice Unit at [schoolsofchoice@cde.state.co.us](mailto:schoolsofchoice@cde.state.co.us).
- 2.4(b) A complete request for a waiver shall include:
- 2.4(b)(i) A list of statutes and/or rules requested for waiver;
  - 2.4(b)(ii) A statement explaining how the waiver would enhance educational opportunity and quality within the school district;
  - 2.4(b)(iii) A statement explaining how costs to the school district of complying with the requirement for which the waiver is requested significantly limit educational opportunity within the school district;
  - 2.4(b)(iv) A statement describing the manner in which the school district shall comply with the intent of the waived rules or statutes as well as how it shall be accountable to the state board for such compliance;
  - 2.4(b)(v) Documentation of legal requirements for district's public hearing process; and
  - 2.4(b)(vi) Additionally, a school district of 3,000 or more pupils shall provide signatures demonstrating that its application has the consent of a majority of the appropriate accountability committee, a majority of the affected licensed administrators, and a majority of the affected school district teachers and shall indicate how the affected staff and committee were determined.

**2.5 State Board Ruling**

The State Board of Education will rule on a waiver request by a school district within 120 days of receipt of a complete request for waiver.

**2.6 Sections Of Law Ineligible For Waiver**

The State Board of Education shall not waive any of the requirements specified in the following statutory provisions:

- 2.6(a) The Public School Finance Act Of 1994, Title 22, Article 54, C.R.S.
- 2.6(b) The Exceptional Children's Educational Act, Title 22, Article 20, C.R.S.
- 2.6(c) Any provision of Title 22, Article 11, Part 5, C.R.S., pertaining to the data necessary for performance reports
- 2.6(d) Any provision of Title 22, C.R.S., that related to fingerprinting and criminal history record checks of educators and school personnel.
- 2.6(e) The Children's Internet Protection Act, Title 22, Article 87, C.R.S.
- 2.6(f) Accountability, pursuant to Title 22, Article 11, C.R.S.
- 2.6(g) Assessments, pursuant to section 22-7-1006.3, C.R.S.
- 2.6(h) Duties of the president and vice president of a school district board of education, pursuant to 22-32-105, C.R.S.
- 2.6(i) Duty of a school district board of education to adopt a policy mandating prohibition against the use of all tobacco products on school property and at school-sponsored activities by students, teachers, staff, and visitors, and to adopt rules to enforce such prohibition, excluding expulsion of any student solely for such tobacco use pursuant to 22-32-109(1)(bb)(I), C.R.S.
- 2.6(j) Limits and requirements for a school district that conducts an educational program outside of its territorial boundaries, pursuant to 22-32-109(2), C.R.S.
- 2.6(k) Conduct and school discipline codes, pursuant to 22-32-109.1(2)(a), C.R.S.
- 2.6(l) Use of on-site peace officers as school resource officers and notifications of arrests and notices issued, pursuant to 22-32-146, C.R.S.
- 2.6(m) Duty of each school district board of education to adopt a written policy setting forth the district's attendance requirements, pursuant to 22-33-104(4), C.R.S.
- 2.6(n) The requirement to post on the internet the statutes for which waivers are granted as provided in Section 22-44-305, C.R.S.
- 2.6(o) Any provisions of section 22-1-130, relating to notification to parents of alleged criminal conduct by charter school employees.

**3.00 Waiver Requests by Charter Schools and Automatic Waivers**

**3.1 List of Automatically Waived Statutes for all charter schools:**

The following statutes will be automatically waived for Charter Schools, including an Institute Charter School. These waivers will be automatically granted to a charter school upon entering into a charter contract with its authorizer, pursuant to section 22-30.5-105, C.R.S.

- 3.1(a) 22-32-109(1)(f), C.R.S. Local board duties concerning selection of staff and pay
- 3.1(b) 22-32-109(1)(t), C.R.S. Determine educational program and prescribe textbooks

- 3.1(c) 22-32-110 (1)(h), C.R.S. Local board powers-Terminate employment of personnel
- 3.1(d) 22-32-110(1)(i), C.R.S. Local board duties-Reimburse employees for expenses
- 3.1(e) 22-32-110(1)(j), C.R.S. Local board powers-Procure life, health, or accident insurance
- 3.1(f) 22-32-110(1)(k), C.R.S. Local board powers-Policies relating the in-service training and official conduct
- 3.1(g) 22-32-110(1)(ee), C.R.S. Local board powers-Employ teachers' aides and other non-certificated personnel
- 3.1(h) 22-32-126, C.R.S. Employment and authority of principals
- 3.1(i) 22-33-104(4), C.R.S. Compulsory school attendance-Attendance policies and excused absences
- 3.1(j) 22-63-301, C.R.S. Teacher Employment Act- Grounds for dismissal
- 3.1(k) 22-63-302, C.R.S. Teacher Employment Act-Procedures for dismissal of teachers
- 3.1(l) 2-63-401, C.R.S. Teacher Employment Act-Teachers subject to adopted salary schedule
- 3.1(m) 22-63-402, C.R.S. Teacher Employment Act-Certificate required to pay teachers
- 3.1(n) 22-63-403, C.R.S. Teacher Employment Act-Describes payment of salaries 3.1(o)
- 22-1-112, C.R.S School Year-National Holidays

**3.2** Legal Standard for granting waivers to charter schools

- 3.2(a) Pursuant to contract, a charter school may operate free from specified school district regulations and state regulations. Pursuant to contract, a local board of education may waive locally imposed school district requirements, without seeking approval of the State Board.
- 3.2(b) The State Board of Education shall grant waivers of state statutory requirements or rules promulgated by the State Board to charter schools when in the judgment of the State Board it deems waivers necessary.
- 3.2(c) Upon request of the charter applicant, the State Board and the charter school authorizer shall provide summaries of such regulations and policies to use in preparing a charter school application.

**3.3** Duration/Revocation

- 3.3(a) Any waiver of state or local school district regulations shall be for the term of the charter for which the waiver is made.
- 3.3(b) A waiver of state statutes or regulations by the State Board shall be subject to review periodically, but at least every five years. A waiver may be revoked if the waiver is deemed no longer necessary by the State Board of Education.

### **3.4 Application Process**

Waiver requests by charter schools shall be submitted for the term of the charter as follows:

Within ten days after the charter school contract is approved, a complete copy of the signed charter contract must be submitted to the State Board of Education by the charter school authorizer and charter school.

### **3.5 Sections of Law Ineligible for Waiver**

The State Board of Education shall not waive any of the requirements specified in the following statutes and/or related rules:

- 3.5(a) School accountability committees as described in section 22-11-401, C.R.S.
- 3.5(b) Assessments required to be administered pursuant to section 22-7-1006.3, C.R.S.;
- 3.5(c) School performance reports pursuant to Title 22, Article 11, Part 5, C.R.S.;
- 3.5(d) The Public School Finance Act of 1994, Title 22, Article 54, C.R.S.;
- 3.5(e) The Children's Internet Protection Act, Title 22, Article 87, C.R.S; or
- 3.5(f) The requirement to post on the internet the statutes for which waivers are granted as provided in Section 22-44-305, C.R.S.
- 3.5(g) Any provisions of section 22-1-130, relating to notification to parents of alleged criminal conduct by charter school employees.

## **4.00 Statement of Basis and Purpose**

The basis of these rules, adopted by the State Board of Education is found in 22-2- 106(1) (A) and (C), 22-2-107(1)(C), 22-2-117, C.R.S., 22-30.5-104(6) and 22-2-117, C.R.S. The purpose of these rules is to clarify the process that schools and school districts must follow in order for the State Board of Education to consider waiver requests involving statutes and rules and regulations that have been imposed on schools and school districts. In addition, the rules specify the process by which waivers may be granted to charter schools pursuant to the aforementioned statutes and to clarify the standards that the State Board will use in determining which waiver requests meet the statutory requirements.

- 4.1 The basis for these amendments, adopted by the State Board of Education in November 2012, is found in section 22-30.5-104 (6), C.R.S., which authorizes the board to promulgate rules identifying state statutes and state rules that are automatically waived for all charter schools.
- 4.2 The basis for amendments to section 3.0 of these rules, adopted by the State Board of Education in November 2014 is found in sections 22-30.5-104-106, 22-30.5-507 and 22-30.5-507, C.R.S., which were amended by the General Assembly in 2014 by House Bill 14-1292. The purpose of these amendments is to repeal the obsolete provisions concerning the process for Charter Schools to request automatic waivers of statute and rule and to revise the list of automatic waivers.
- 4.3 The basis for amendments to section 3.01 of these rules, adopted in by the State Board of Education in 2016 is found in Section 22-30.5-104, C.R.S., which was amended by the General Assembly in 2016 in House Bill 16-1422.
- 4.4 The basis for amendments adopted by the State Board of Education 2017 is House Bill 17-1375 which removed two waivers from the list of automatic waivers for charter schools and created a requirement for districts and charter schools to post information on the internet regarding the statutes for which waivers have been granted.

- 4.5 The basis for these amendments is found in sections 22-30.5-104(6) and 22-30.5-507(7), C.R.S., which was amended by the General Assembly in 2018 in House Bill 18-1269.

---

**Editor's Notes**

**History**

Sections 2.04(a), 3.06(b)-(w), 4.05 eff. 01/14/2013.

Sections 2217-R-1.00, 2217-R-3.00, 4.06 eff. 01/15/2015.

Entire rule eff. 01/30/2016.

Sections 2.05, 2.06(j)-(m), 3.01(C)-(Q), 4.07 eff. 12/15/2016.

Sections 2.06(n), 3.01, 3.05(d)-(f), 4.08 eff. 12/30/2017.



**CYNTHIA H. COFFMAN**  
Attorney General  
**MELANIE J. SNYDER**  
Chief Deputy Attorney General  
**LEORA JOSEPH**  
Chief of Staff  
**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000  
  
**Office of the Attorney General**

Tracking number: 2018-00413

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

Colorado State Board of Education

**on 10/10/2018**

1 CCR 301-35

**RULES FOR THE ADMINISTRATION OF THE WAIVER OF STATUTE AND RULE**

The above-referenced rules were submitted to this office on 10/11/2018 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, 2018 11:24:10

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General

## **Permanent Rules Adopted**

### **Department**

Department of Education

### **Agency**

Colorado State Board of Education

### **CCR number**

1 CCR 301-90

### **Rule title**

1 CCR 301-90 RULES FOR ADMINISTRATION OF EARLY LITERACY GRANT  
PROGRAM 1 - eff 11/30/2018

### **Effective date**

11/30/2018

## **DEPARTMENT OF EDUCATION**

### **Colorado State Board of Education**

#### **RULES FOR ADMINISTRATION OF EARLY LITERACY GRANT PROGRAM**

##### **1 CCR 301-90**

##### **0.0 STATEMENT OF BASIS AND PURPOSE**

These rules are promulgated pursuant to Colorado Revised Statutes section 22-2-107 (1) (c) and section 22-7-1209 (1) (f). Section 22-7-1211, C.R.S., authorizes the Colorado Department of Education to provide moneys to local education providers to implement literacy support and intervention instruction programs to assist students in kindergarten and first, second, and third grades to achieve reading competency. Section 22-7-1209 (1) (f), C.R.S., requires the Colorado State Board of Education to promulgate rules for the administration of these grant programs.

##### **1.0 DEFINITIONS**

- 1.1 “BOCES” or “Board of Cooperative Services” shall have the same meaning as provided in section 22-5-103 (2), C.R.S.
- 1.2 “Department” means the Colorado Department of Education created pursuant to section 24-1-115, C.R.S.
- 1.3 “Evidence-Based” means the instruction or item described is based on reliable, trustworthy, and valid evidence and has demonstrated a record of success in adequately increasing students’ reading competency in the areas of phonemic awareness, phonics, vocabulary development, reading fluency, including oral skills, and reading comprehension.
- 1.4 “District Charter School” means a charter school authorized by a school district pursuant to part 1 of article 30.5 of title 22.
- 1.5 “Institute Charter School” means a charter school authorized by the state charter school institute pursuant to part 5 of article 30.5 of title 22.
- 1.6 “Local Education Provider” means a school district, a Board of Cooperative Services, a district charter school, or an institute charter school.
- 1.7 “Rural School District” means a Colorado school district that the Department has determined to be rural based on the size of the district, the distance from the nearest large urban/urbanized area.
- 1.8 “School District” or “District” means a school district organized and authorized by section 15 of Article IX of the state constitution and organized pursuant to article 30 of title 22, Colorado Revised Statutes.
- 1.9 “Scientifically-Based” means that the instruction or item described is based on research that applies rigorous, systematic, and objective procedures to obtain valid knowledge that is relevant to reading development, reading instruction, and reading difficulties.
- 1.10 “Significant Reading Deficiency” means that a student does not meet the minimum skill levels for reading competency in the areas of phonemic awareness, phonics, vocabulary development, reading fluency, including oral skills, and reading comprehension established by the State Board pursuant to section 22-7-1209, C.R.S., for the student’s grade level.
- 1.11 “Small Rural School District” means a Rural School District that enrolls fewer than one thousand two hundred students in kindergarten through twelfth grade.

- 1.12 “State Board” means the State Board of Education established pursuant to Section 1 of Article IX of the state constitution.

2.0 **APPLICATION REQUIREMENTS AND TIMELINE FOR COMPREHENSIVE EARLY LITERACY GRANTS**

- 2.1 Any local education provider interested in obtaining funding shall submit a Comprehensive Early Literacy Grant application electronically to the Department, using the application form provided by the Department. Local education providers may apply individually or as part of a group of local education providers. These grants will be offered on a four year cycle.
- 2.2 Each Comprehensive Early Literacy Grant application submitted shall include, but need not be limited to, the following:
- 2.2 (A) Information concerning the percentage of kindergarten and first-, second-, and third-grade students enrolled in the applying local education provider or group of local education providers who have Significant Reading Deficiencies;
  - 2.2 (B) Identification of instructional programs aligned to the READ Act that the applicant(s) plan to implement using the grant moneys, including a description of whether the programs are Evidence-Based or Scientifically-Based literacy support and intervention instruction programs that are proven to be successful in other public schools in the country;
  - 2.2 (C) Identification of the professional development program(s) that the applicant(s) plan to implement for educators to assist students in kindergarten and first, second, and third grades to achieve reading competency;
  - 2.2 (D) A description of the methods that will be used to sustain positive student achievement outcomes over time to ensure that students who move out of the Significant Reading Deficiency designation are able to sustain their improvement;
  - 2.2 (E) An explanation of the cost of the instructional program that the applicant(s) plan to implement using the grant moneys and an explanation of how grant funding will be used to supplement and not supplant any funding currently being used on intensive literacy programs already provided for eligible students;
  - 2.2 (F) The measurable student outcomes that the applicant expects to achieve as a result of implementing the proposed program and a description of the method that will be used to monitor and evaluate outcomes; and
  - 2.2 (G) Any other necessary information, as identified by the Department.
- 2.3 Starting in fiscal year 2018-2019 the Department shall approve and review the Comprehensive Early Literacy Grants on a four year cycle. The first year of the grant award will serve as an implementation year followed by three years of operationalizing the grant. Upon completion of the four-year cycle, grantees will have the opportunity to apply for an additional one year sustainability grant described in section 3.0.
- 2.4 If the legislature alters the appropriation for the Early Literacy Grant Program through the annual appropriations process prior to the completion of a four year cycle, the Department may choose to open another application cycle, or reduce or increase current grantees’ annual funding as necessary.

3.0 **APPLICATION REQUIREMENTS AND TIMELINE FOR EARLY LITERACY SUSTAINABILITY GRANTS**

- 3.1 An application for grants to assist local education providers in sustainability planning after their receipt of a Comprehensive Early Literacy Grant, including the continued use of a literacy coach, will be opened in the final year of the Comprehensive Early Literacy Grant cycle.
- 3.2 Eligibility for the Sustainability Grants is limited to those local education providers that have received and are in the last year of funding for the Comprehensive Early Literacy Grant.
- 3.3 Each Sustainability Grant application submitted shall include but need not be limited to the following:
  - 3.3 (A) Progress made by the school(s) over the course of the Comprehensive Early Literacy Grant period;
  - 3.3 (B) A description of how the funds will support on-going positive student outcomes in literacy beyond the sustainability year; and
  - 3.3 (C) A budget for the funds requested and a plan describing how the funds will be used in the sustainability year.

#### **4.0 APPLICATION REQUIREMENTS FOR RURAL LOCAL EDUCATION PROVIDERS**

- 4.1 The State Board shall ensure that a local education provider that is a Rural School District or a Small Rural School District, or a District Charter School or an Institute Charter School that is located within the boundaries of a Rural School District or a Small Rural School District may submit a simplified grant application. The simplified application process will include:
  - 4.1 (A) A request to the Department for an application that includes pre-populated data indicating the percentage of kindergarten and first-, second-, and third-grade students enrolled in the applying local education provider or group of local education providers who have Significant Reading Deficiencies.
  - 4.1 (B) An optional narrative to the cost/budget proposals portion of the Comprehensive Early Literacy Grant application.
  - 4.1 (C) An optional submission of the executive summary describing the proposal.
  - 4.1 (D) Technical assistance from the Department to support application efforts.
- 4.2 The Department shall continue to monitor and make adjustments to the application process based on feedback from rural and small rural school districts.

#### **5.0 APPLICATION REQUIREMENTS AND TIMELINE FOR PROFESSIONAL DEVELOPMENT GRANTS**

- 5.1 On an annual basis, any local education provider interested in obtaining funding shall submit an Early Literacy Professional Learning Grant application electronically to the Department, using the application form provided by the Department. A local education provider may apply individually or as part of a group of local education providers.
- 5.2 Each Early Literacy Professional Learning Grant application submitted shall include, but need not be limited to, the following:
  - 5.2 (A) Information concerning the percentage of kindergarten and first-, second-, and third-grade students enrolled in the applying local education provider or group of local education providers who have Significant Reading Deficiencies;
  - 5.2 (B) Identification of the Evidence-Based or Scientifically-Based universal instruction and intervention programs that the applicant(s) are currently implementing;

- 5.2 (C) Identification of the professional development program(s) aligned to the READ Act that the applicant(s) plan to implement for educators to assist students in kindergarten and first, second, and third grades to achieve reading competency;
  - 5.2 (D) A description of how acquiring these additional funds will support positive student achievement outcomes over time to ensure that students in all tiers, including those who move out of the Significant Reading Deficiency designation are able to sustain their improvement;
  - 5.2 (E) An explanation of the cost of the identified professional development plan that the applicant(s) requests to implement using the grant moneys and an explanation of how grant funding will be used to supplement and not supplant any funding currently being used;
  - 5.2 (F) The measurable student outcomes that the applicant expects to achieve as a result of implementing the proposed professional development plan and a description of the method that will be used to monitor and evaluate outcomes; and
  - 5.2 (G) Any other necessary information, as identified by the Department.
- 5.3 Annually, the Department shall review each grant application received and recommend to the State Board whether to award the grant and the duration and amount of each grant.
- 5.4 On or before June 15 of each year, based on the recommendations of the Department, the State Board shall award grants to applying local education providers or groups of local education providers.

## **6.0 APPLICATION EVALUATION CRITERIA**

- 6.1 In reviewing applications for the Comprehensive and Professional Development Early Literacy Grant to recommend which applicants should receive grant funding and the duration and amount of each grant, the Department shall consider the following criteria:
- 6.1 (A) The percentage of kindergarten and first-, second-, and third-grade students enrolled in the applying local education provider or group of local education providers who have Significant Reading Deficiencies;
  - 6.1 (B) The use or proposed use of Instructional programming which is aligned to the READ Act and is Evidence-Based or Scientifically-Based;
  - 6.1 (C) The quality of the professional development program(s) that the applicant(s) plan to implement for educators to assist students in kindergarten and first-, second-, and third-grade students to achieve reading competency;
  - 6.1 (D) The plan the applicant has to sustain positive student gains over time;
  - 6.1 (E) The cost of the instructional program that the applicant(s) plan to implement using the grant moneys; and
  - 6.1 (F) The rigor with which the applicant(s) intend(s) to monitor and evaluate the implementation of the proposed program.
- 6.2 In reviewing applications for the Early Literacy Sustainability Grant to recommend which applicants should receive grant funding, the duration, and the amount of each grant, the Department shall consider the following:
- 6.2 (A) How and what local funds will be used to support literacy achievement over

time;

- 6.2 (B) The transition plan to ensure that new personnel and stakeholders are aligned to the grant efforts;
- 6.2 (C) The professional development plan to build system capacity as consultant and CDE support transition out of the system; and
- 6.2 (D) The quality of the written plan describing how support and continued professional growth will be offered through and beyond the sustainability fund year aligned to ongoing monitoring of student growth and progress.

## **7.0 DATA COLLECTION AND REPORTING**

- 7.1 Each local education provider that receives an early literacy grant shall submit information to the Department describing the following:
  - 7.1 (A) The instructional programs or services for which the local education provider used the grant;
  - 7.1 (B) The number and grade levels of students who participated in each of the types of programs or services provided; and
  - 7.1 (C) The progress made by participating students in achieving reading competency.
- 7.2 The Department shall annually submit to the State Board, governor, the president of the senate, the speaker of the house of representatives, and the education committees of the house of representatives and the senate, or any successor committees, and shall post on the Department web site a report that includes a summary of the implementation of the early literacy grant program in the preceding budget year, including the number of grants, the local education providers that received grants, and the amount of each grant.

**CYNTHIA H. COFFMAN**  
Attorney General  
**MELANIE J. SNYDER**  
Chief Deputy Attorney General  
**LEORA JOSEPH**  
Chief of Staff  
**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000  
  
**Office of the Attorney General**

Tracking number: 2018-00414

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

Colorado State Board of Education

**on 10/11/2018**

1 CCR 301-90

**RULES FOR ADMINISTRATION OF EARLY LITERACY GRANT PROGRAM**

The above-referenced rules were submitted to this office on 10/11/2018 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 23, 2018 09:38:43

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General



## **Permanent Rules Adopted**

**Department**

Department of Education

**Agency**

Colorado State Board of Education

**CCR number**

1 CCR 301-101

**Rule title**

1 CCR 301-101 RULES FOR THE ADMINISTRATION OF EDUCATOR LICENSE  
ENDORSEMENTS 1 - eff 11/30/2018

**Effective date**

11/30/2018

## DEPARTMENT OF EDUCATION

### Colorado State Board of Education

## RULES FOR THE ADMINISTRATION OF EDUCATOR LICENSE ENDORSEMENTS

### 1 CCR 301-101

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

---

#### 7.09 School Counselor (PreK-12)

To be endorsed as a school counselor, applicants shall hold a master's or higher degree in school counseling from a regionally accredited institution of higher education; have successfully completed an approved program in school counseling as defined by accreditation by the Council for Accreditation of Counseling & Related Educational Programs or demonstrate equivalent coursework and training experiences; have passed a state-approved assessment in school counseling; have completed a minimum of 100 clock-hours of a practicum, scheduled throughout the program, and a 600 clock-hour internship, supervised by a licensed school counselor in a school setting with multiple grade levels of students. The internship shall provide opportunities for the candidate, under the supervision of a licensed school counselor, to engage in a variety of activities that an effective school counselor would be expected to perform as identified in the 2016 Council for Accreditation of Counseling and Related Educational Programs Standards (Colorado School Counseling Standards) effective July 1, 2016 and accessible at [www.cacrep.org](http://www.cacrep.org). The Colorado Department of Education maintains a copy of the standards readily available for public inspection at 6000 E. Evans Avenue, Building #2, Suite 100, Denver, CO 80222, during regular business hours.

**CYNTHIA H. COFFMAN**  
Attorney General  
**MELANIE J. SNYDER**  
Chief Deputy Attorney General  
**LEORA JOSEPH**  
Chief of Staff  
**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000  
  
**Office of the Attorney General**

Tracking number: 2018-00411

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

Colorado State Board of Education

**on 10/10/2018**

1 CCR 301-101

**RULES FOR THE ADMINISTRATION OF EDUCATOR LICENSE ENDORSEMENTS**

The above-referenced rules were submitted to this office on 10/11/2018 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, 2018 11:23:54

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General

## **Permanent Rules Adopted**

### **Department**

Department of Regulatory Agencies

### **Agency**

Division of Insurance

### **CCR number**

3 CCR 702-1

### **Rule title**

3 CCR 702-1 ADMINISTRATIVE PROCEDURES 1 - eff 12/01/2018

### **Effective date**

12/01/2018

# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance

### 3 CCR 702-1

#### ADMINISTRATIVE PROCEDURES

##### Amended Regulation 1-2-17

##### COMPENSATION DISCLOSURES FOR HEALTH INSURANCE PRODUCERS

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Definitions
Section 5	Disclosing Compensation
Section 6	Fees Allowed for the Sale or Renewal of an Individual Health Benefit Plan
Section 7	Severability
Section 8	Enforcement
Section 9	Effective Date
Section 10	History
Appendix A	Required Disclosure for Fees Charged for the Sale of an Individual Health Benefit Plan
Appendix B	Required Disclosure for Fees Charged for Assisting with the Renewal of an Individual Health Benefit Plan

##### **Section 1 Authority**

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109, 10-16-133(5)(c), and 10-22-112(3)(b), C.R.S.

##### **Section 2 Scope and Purpose**

The purpose of this regulation is to establish that insurance producers who sell health care insurance shall disclose to the person purchasing the policy that the insurance producer will receive a commission; establish the required disclosure of the standard compensation schedule of the producer to the consumer; and to establish the conditions and notice that must be provided to a consumer if a producer intends to charge a fee for the sale or for providing assistance with renewal of an individual health benefit plan. This regulation replaces Colorado Insurance Emergency Regulation 18-E-03 that became effective on August 8, 2018, in its entirety.

##### **Section 3 Applicability**

The requirements and provisions of this regulation apply to all producers who sell health care insurance. This regulation does not apply to sales under Medicare Advantage (also known as Medicare Part C), Medicare Part D Prescription Drug Benefit programs, Medicare Supplement insurance, travel insurance, disability income insurance, credit insurance or long-term care insurance.

##### **Section 4 Definitions**

- A. "Additional compensation" means, for the purposes of this regulation, compensation received when the producer provides additional services on behalf of an insurer. For example, the producer may perform some underwriting or administrative services, such as policy issuance, for which additional compensation beyond standard compensation or contingent compensation is

appropriate. These services are not originally contemplated in an insurer's standard or contingent compensation payments.

- B. "Carrier" shall have the same meaning as found at § 10-16-102(8), C.R.S.
- C. "Contingent compensation" means, for the purposes of this regulation, the incentive commission for insurance producers to meet pre-established goals for profitability, retention and/or growth standards across all of the policies they place with an insurer for a specific year.
- D. "Exchange" shall have the same meaning as found at § 10-16-102(26), C.R.S.
- E. "Health benefit plan" shall have the same meaning as found at § 10-16-102(32), C.R.S.
- F. "Health care insurance" shall have the same meaning as "health coverage plan", as defined in § 10-16-102(34), C.R.S., but, for the purposes of this regulation, does not include long-term care insurance.
- G. "Insurance producer" or "producer", shall have the same meaning as found at § 10-2-103(6), C.R.S., with the exception that for the purposes of this regulation it does not include § 10-2-103(6)(b), C.R.S.
- H. "Insurer" shall have the same meaning as found at § 10-2-103(6.5), C.R.S., and, for the purposes of this regulation, shall include entities subject to Parts 3 and 4 of Article 16 of Title 10.
- I. "Sale" means, for the purposes of this regulation, the exchange of a contract of insurance for money or its equivalent.
- J. "Standard compensation" means, for the purposes of this regulation, the set amount or percentage commission the insurer pays the insurance producer for selling its insurance policy. Standard compensation does not include renewal commissions.

## **Section 5      Disclosing Compensation**

- A. All producers who sell health care insurance shall disclose his or her standard compensation that may be received. The standard compensation may be disclosed as a percentage or fixed amount, depending on how the commission is paid.
- B. All compensation shall be disclosed by the health producer prior to finalizing the sale of health care insurance.
- C. The producer disclosure requirements apply to both sales of new policies and policy renewals. The producer shall maintain written certification that he or she has provided the required disclosure to a policyholder. This may be in the form of Certificate of Mailing or Hand Delivery signed by the producer or a copy of an email to the policyholder. The Colorado Division of Insurance will not provide or approve forms used by producers for this disclosure. The written certification of delivery or copy of the email to the policyholder must be retained by the producer pursuant to Colorado Insurance Regulation 1-1-7 for the current calendar year and two (2) prior years.
- D. In some instances, a producer may sell a product for an insurer but will not be compensated by that insurer. The compensation may come from the insurer's parent or other affiliate, or from a third party. The source of the producer's standard compensation must be disclosed.
- E. Any contingent or additional compensation-that may be received by the producer shall be disclosed.

## **Section 6      Fees Allowed for the Sale or Renewal of an Individual Health Benefit Plan**

- A. An insurance producer may charge a fee for the sale or for assisting with the renewal of an individual health benefit plan if both of the following conditions are met:
  - 1. The insurance producer does not receive commission from the carrier for the individual health benefit plan being sold or renewed; and
  - 2. The insurance producer provides the notice found in Appendix A or Appendix B of this regulation, as appropriate, prior to the sale of an individual health benefit plan or prior to assisting the individual with the review of his or her current individual health benefit plan eligible for guaranteed renewal.
- B. An insurance producer shall refund all fees received for the sale or assisting with the renewal of a particular carrier's individual health benefit plans if the insurance producer receives contingent compensation from the carrier for the plans sold prior to reaching the contingent compensation threshold.
- C. The fee the insurance producer charges for the sale or for assisting with the renewal of an individual health benefit plan shall be the same for both on-exchange and off-exchange individual health benefit plans.
- D. An insurance producer shall not charge a fee to assist in enrolling an individual in Medicaid.
- E. An insurance producer shall not charge a fee to assist in enrolling an individual in the Children's Basic Health Plan.
- F. An insurance producer charging a fee for the sale or for assisting with the renewal of an individual health benefit plan is soliciting or negotiating an application for insurance on behalf of the carrier offering the individual health benefit plan and the insurance producer represents the carrier, not the consumer, in any dispute between the carrier and the consumer.

## **Section 7      Severability**

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

## **Section 8      Enforcement**

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

## **Section 9      Effective Date**

This regulation shall become effective on December 1, 2018.

## **Section 10      History**

Emergency Regulation 08-E-7, effective January 1, 2009.  
Original Regulation 1-2-17, effective March 2, 2009.  
Emergency regulation 18-E-03 effective August 8, 2018.  
Amended regulation 1-2-17, effective December 1, 2018.

## APPENDIX A

### Required Disclosure for Fees Charged for the Sale of an Individual Health Benefit Plan

[PRODUCER LETTERHEAD ALLOWED]

## **INSURANCE PRODUCER FEE DISCLOSURE FOR THE SALE OF AN INDIVIDUAL HEALTH BENEFIT PLAN**

[The following text must be in 12 point font.]

I [PRODUCER NAME] hereby disclose to [NAME OF CLIENT] on [DATE] that I am not receiving any compensation for the individual health benefit plan you have selected.<sup>1</sup>

Subject to the penalties set forth in § 10-2-801, C.R.S., I certify, through this notice, that I do not receive commission for the sale of this individual health benefit plan from the carrier offering this individual health benefit plan. I also certify that I will charge the same fee for the sale of an on-exchange individual health benefit plan as an off-exchange individual health benefit plan.

If I am paid commission for the sale of this individual health benefit plan in the future, I agree to refund the full amount of the fee that you have paid.

I will not charge a fee for assisting in enrollment in Medicaid or the Children's Basic Health Plan.

The fee that I will charge you for the sale of an individual health benefit plan will be: [DOLLAR AMOUNT].

[NAME OF PRODUCER]

[NAME OF CLIENT]

[PRODUCER SIGNATURE AND DATE]

[CLIENT SIGNATURE AND DATE]

---

<sup>1</sup> Sections 10-16-133(5)(b) and 10-22-112(3)(a), C.R.S.



APPENDIX B

Required Disclosure for Fees Charged for Assisting with the Renewal of an Individual Health Benefit Plan

[PRODUCER LETTERHEAD ALLOWED]

**INSURANCE PRODUCER FEE DISCLOSURE FOR ASSISTING WITH  
THE RENEWAL OF AN INDIVIDUAL HEALTH BENEFIT PLAN**

[The following text must be in 12 point font.]

I [PRODUCER NAME] hereby disclose to [NAME OF CLIENT] on [DATE] that I am not receiving any compensation for reviewing and discussing other plan options with you in an effort to provide a recommendation for an individual health benefit plan that best suits your needs.

Subject to the penalties set forth in § 10-2-801, C.R.S., I certify, through this notice, that I do not receive commission for the renewal of this individual health benefit plan from the carrier offering this individual health benefit plan. I also certify that I will charge the same fee for assisting with the renewal of an on-exchange individual health benefit plan as an off-exchange individual health benefit plan.

If I am paid commission for the renewal of this individual health benefit plan in the future, I agree to refund the full amount of the fee that you have paid.

I will not charge a fee for assisting in enrollment in Medicaid or the Children's Basic Health Plan.

The fee that I will charge you for reviewing and discussing other plan options with you and assisting you in the renewal of your current individual health benefit plan will be: [DOLLAR AMOUNT].

[NAME OF PRODUCER]

[NAME OF CLIENT]

[PRODUCER SIGNATURE AND DATE]

[CLIENT SIGNATURE AND DATE]

**CYNTHIA H. COFFMAN**  
Attorney General  
**MELANIE J. SNYDER**  
Chief Deputy Attorney General  
**LEORA JOSEPH**  
Chief of Staff  
**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000  
  
**Office of the Attorney General**

Tracking number: 2018-00440

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

Division of Insurance

**on 10/10/2018**

3 CCR 702-1

**ADMINISTRATIVE PROCEDURES**

The above-referenced rules were submitted to this office on 10/11/2018 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 23, 2018 10:08:09

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General

## **Permanent Rules Adopted**

**Department**

Department of Regulatory Agencies

**Agency**

Division of Insurance

**CCR number**

3 CCR 702-1

**Rule title**

3 CCR 702-1 ADMINISTRATIVE PROCEDURES 1 - eff 12/01/2018

**Effective date**

12/01/2018

# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance

### 3 CCR 702-1

#### ADMINISTRATIVE PROCEDURES

#### Amended Regulation 1-2-9

#### FEES CHARGED BY PRODUCERS

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Definitions
Section 5	Prohibited Fees
Section 6	Fees Allowed
Section 7	Severability
Section 8	Enforcement
Section 9	Effective Date
Section 10	History

#### **Section 1 Authority**

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109 and 10-16-133(5)(c), C.R.S.

#### **Section 2 Scope and Purpose**

The purpose of this regulation is to implement rules prohibiting producers from charging certain fees for which they are already compensated through commissions and to clarify which fees may be charged. This regulation replaces Colorado Emergency Insurance Regulation 18-E-02 that became effective on August 8, 2018 in its entirety.

#### **Section 3 Applicability**

This regulation shall apply to all insurance producers and insurance agencies over whom the Division of Insurance has authority, with the exception of public adjusters and public adjuster agencies. This regulation does not apply to the sale, solicitation, and negotiation of bail bonds. This regulation does not apply to the fees allowed for the sale of an individual health benefit plan as found at § 10-16-133(5)(b), C.R.S.

#### **Section 4 Definitions**

- A. "Health benefit plan" shall have the same meaning as found at § 10-16-102(32), C.R.S.
- B. "Insurance producer" or "producer", shall have the same meaning as found at § 10-2-103(6), C.R.S., with the exception that for the purposes of this regulation it does not include § 10-2-103(6)(b), C.R.S.
- B. "Insurer" shall have the same meaning as found at § 10-2-103(6.5), C.R.S., and, for the purposes of this regulation, shall include entities subject to Parts 3 and 4 of Article 16 of Title 10.

- C. "Person" shall have the same meaning as found at § 10-2-103(8), C.R.S.
- D. "Wholesale intermediary" means, for the purposes of this regulation, a person or organization that deals directly with a licensed retail producer and not with a consumer.

## **Section 5 Prohibited Fees**

- A. General.
  - 1. Agreements between the insurer and insurance producers must include a commission schedule which lists the producer's compensation for soliciting and acquiring insurance business.
  - 2. Insurers subsequently include these commissions and/or other acquisition expenses in their comprehensive rate filings and must justify these expenses.
  - 3. If insurance producers charge a separate fee in addition to those included as commissions in the insurers' rate filings, the premiums could be considered excessive.
- B. Insurance producers are prohibited from charging separate fees in addition to those contemplated in the rate filing and included in their commissions for the solicitation and procurement of insurance products or for servicing existing insurance policies. These services may include, but are not limited to:
  - 1. Inspections;
  - 2. Quoting premiums;
  - 3. Issuing or signing policies;
  - 4. Examining and mailing policies, applications and daily reports;
  - 5. Compiling figures for accounts current and mailing billing notices;
  - 6. Correspondence and other bookkeeping and clerical work;
  - 7. Issuing certificates of insurance and endorsements;
  - 8. Issuing proof of insurance cards and notices (SR-22's);
  - 9. Making copies of insurance documents; and
  - 10. Taking loss information.
- C. Insurance producers are also prohibited from charging fees for purchasing new computer equipment, extending business hours, adding new sales facilities, or other overhead expenses associated with the solicitation or procurement of insurance products or the servicing of existing insurance policies.
- D. Insurance producers may not condition the placement of insurance upon the provision of other services for which fees may be charged.
- E. The prohibitions in this Section 5 shall not apply to insurance wholesale intermediaries.

## **Section 6 Fees Allowed**

- A. Insurance producers may charge fees for specific services which are beyond the scope of services pertaining to acquiring and/or maintaining specific insurance policies, including, but not limited to, risk management services, financial planning, investment counseling, qualified retirement plan design or administration, estate planning, third party employee benefit plans, or any other service for which the insurance producer does not receive a commission from an insurance company. Such fees may be charged only under the following circumstances:
  - 1. When a person signs a disclosure statement in advance of the performance of the specific services, which states that the person is under no obligation to purchase any insurance product through the insurance producer in exchange for receiving the specific services. This requirement may be met by including the disclosure language in any disclosure statement required by federal or state securities law.
  - 2. In those cases where it is clear from the outset that no insurance product sale related to the specific services rendered will occur through the insurance producer.
- B. The insurance producer must maintain records, and shall retain a copy of the disclosure statement, required in Section 6.A.1. of this regulation, for not less than three (3) years after completion of services. A copy shall be provided to the Commissioner upon request.
- C. Insurance wholesale intermediaries shall advise the insurance producer, in writing, that "the cost of the insurance coverage provided herein includes a fee to a wholesale intermediary in addition to the premium charges."
- D. Section 6 does not apply to the sale, solicitation, and negotiation of title insurance.
- E. Producers shall only charge a fee for the sale of an individual health benefit plan in accordance with the requirements contained in Colorado Insurance Regulation 1-2-17.

## **Section 7 Severability**

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

## **Section 8 Enforcement**

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

## **Section 9 Effective Date**

This regulation shall become effective on December 1, 2018.

## **Section 10 History**

New regulation effective June 1, 1994.  
Amended regulation effective September 1, 2003.  
Repealed and repromulgated regulation effective May 1, 2014.  
Emergency regulation effective August 8, 2018.  
Amended regulation effective December 1, 2018.

**CYNTHIA H. COFFMAN**  
Attorney General

**MELANIE J. SNYDER**  
Chief Deputy Attorney General

**LEORA JOSEPH**  
Chief of Staff

**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000

**Office of the Attorney General**

Tracking number: 2018-00439

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

Division of Insurance

**on 10/10/2018**

3 CCR 702-1

**ADMINISTRATIVE PROCEDURES**

The above-referenced rules were submitted to this office on 10/11/2018 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 23, 2018 10:07:58

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General

## **Permanent Rules Adopted**

### **Department**

Department of Regulatory Agencies

### **Agency**

Division of Insurance

### **CCR number**

3 CCR 702-4 Series 4-3

### **Rule title**

3 CCR 702-4 Series 4-3 LIFE, ACCIDENT AND HEALTH, Series 4-3 Medicare 1 - eff  
12/01/2018

### **Effective date**

12/01/2018



# **DEPARTMENT OF REGULATORY AGENCIES**

## **Division of Insurance**

### **3 CCR 702-4**

#### **LIFE, ACCIDENT AND HEALTH**

##### **Amended Regulation 4-3-1**

##### **MINIMUM STANDARDS FOR MEDICARE SUPPLEMENT POLICIES**

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Definitions
Section 5	Policy Definitions and Terms
Section 6	Policy Provisions
Section 7	Minimum Benefit Standards for Pre-Standardized Medicare Supplement Benefit Plan Policies or Certificates issued for Delivery Prior to May 1, 1992
Section 8	Benefit Standards for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After May 1, 1992 and with an Effective Date for Coverage Prior to June 1, 2010
Section 8.1	Benefit Standards for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery with an Effective Date for Coverage on or after June 1, 2010
Section 9	Standard Benefit Standards for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery After April 30, 1992 and with an Effective Date for Coverage prior to June 1, 2010
Section 9.1	Standard Medicare Supplement Plans for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery with an Effective Date for Coverage on or after June 1, 2010
Section 9.2	Standard Medicare Supplement Benefit Plans for 2020 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery to Individuals Newly Eligible for Medicare on or After January 1, 2020
Section 10	Open Enrollment
Section 11	Guaranteed Issue for Eligible Persons
Section 12	Standards for Claims Payment
Section 13	Loss Ratio Standards and Refund or Credit of Premium
Section 14	Filing and Approval of Policies and Certificates and Premium Rates
Section 15	Permitted Compensation Arrangements
Section 16	Required Disclosure Provisions
Section 17	Requirements for Application Forms and Replacement Coverage
Section 18	Filing Requirements for Advertising
Section 19	Standards for Marketing
Section 20	Appropriateness of Recommended Purchase and Excessive Insurance
Section 21	Reporting of Multiple Policies
Section 22	Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates
Section 23	Readability Standards
Section 24	Medicare Select Policies and Certificates
Section 25	Incorporated Materials
Section 26	Severability
Section 27	Enforcement
Section 28	Effective Date

Section 29	History
Appendix A	Reporting Form for Calculation of Loss Ratios
Appendix B	Outline of Coverage Forms
Appendix C	Replacement Forms
Appendix D	Form for Reporting Duplicate Policies
Appendix E	Disclosure Statements

## **Section 1      Authority**

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-18-103(2), 10-18-104, 10-18-106 and 10-1-109, C.R.S.

## **Section 2      Scope and Purpose**

The purpose of this regulation is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; to provide for full disclosure in the sale of accident and sickness insurance coverage to persons eligible for Medicare; and to comply with the mandate of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) which prohibit the sale of Medicare supplement benefit policies that cover Medicare Part B deductibles to "newly eligible" Medicare beneficiaries defined as those individuals who become eligible for Medicare due to age, disability or end-stage renal disease, on or after January 1, 2020.

## **Section 3      Applicability**

- A. Except as otherwise specifically provided in Sections 7, 12, 13, 16 and 21, this regulation shall apply to:
  - 1. All Medicare supplement policies delivered or issued for delivery in this state; and
  - 2. All certificates issued under group Medicare supplement policies or subscriber contracts, which certificates have been delivered or issued for delivery in this state.
- B. This regulation shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.
- C. Except as specifically provided by statute, Medicare supplement policies are regulated under §§ 10-18-101 to 109, C.R.S., and any regulations promulgated there under. Nothing in this regulation shall be construed as conflicting with statutes that are not specifically applicable to Medicare supplement insurance.

## **Section 4      Definitions**

- A. "Applicant" means, for the purposes of this regulation:
  - 1. In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits; and
  - 2. In the case of a group Medicare supplement policy, the proposed certificate holder.

- B. "Bankruptcy" means, for the purposes of this regulation, when a Medicare Advantage organization that is not an issuer has filed, or has filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.
- C. "Certificate" means, for the purposes of this regulation, any certificate delivered or issued for delivery in this state under a group Medicare supplement policy.
- D. "Certificate form" means, for the purposes of this regulation, the form on which the certificate is delivered or issued for delivery by the issuer.
- E. "Continuous period of creditable coverage" means, for the purposes of this regulation, the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days for voluntary terminations and six (6) months for involuntary terminations (other than non payment of premium or fraud).
- F. Creditable Coverage
  - 1. "Creditable coverage" means, for the purposes of this regulation, with respect to an individual, coverage of the individual provided under any of the following:
    - a. A group health plan;
    - b. Health insurance coverage;
    - c. Part A or Part B of Title XVIII of the Social Security Act (Medicare);
    - d. Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under Section 1928;
    - e. Chapter 55 of Title 10 United States Code (CHAMPUS);
    - f. A medical care program of the Indian Health Service or of a tribal organization;
    - g. A state health benefits risk pool;
    - h. A health plan offered under chapter 89 of Title 5 United States Code (Federal Employees Health Benefits Program);
    - i. A public health plan; and
    - j. A health plan under Section 5(e) of the Peace Corps Act (22 United States Code 2504(e)).
  - 2. "Creditable coverage" shall not include, for the purposes of this regulation, one or more, or any combination of, the following:
    - a. Coverage only for accident or disability income insurance, or any combination thereof;
    - b. Coverage issued as a supplement to liability insurance;
    - c. Liability insurance, including general liability insurance and automobile liability insurance;

- d. Workers' compensation or similar insurance;
  - e. Automobile medical payment insurance;
  - f. Credit-only insurance;
  - g. Coverage for on-site medical sites; and
  - h. Other similar insurance coverage, specified in federal regulations, under which benefits for medical coverage are secondary or incidental to other insurance benefits.
- 3. "Creditable coverage" shall not include, for the purposes of this regulation, the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan:
  - a. Limited scope dental or vision benefits;
  - b. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and
  - c. Such other similar, limited benefits as are specified in federal regulations.
- 4. "Creditable coverage" shall not include, for the purposes of this regulation, the following benefits if offered as independent, non-coordinated benefits:
  - a. Coverage only for a specified disease or illness; and
  - b. Hospital indemnity or other fixed indemnity insurance.
- 5. "Creditable coverage" shall not include, for the purposes of this regulation, the following if it is offered as a separate policy, certificate or contract of insurance:
  - a. Medicare supplemental health insurance as defined under Section 1882(g)(1) of the Social Security Act;
  - b. Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code; and
  - c. Similar supplemental coverage provided to coverage under a group health plan.
- G. "Employee welfare plan" means, for the purposes of this regulation, a plan, fund or program of employee benefits as defined in 29 U.S.C. Section 1002 (Employee Retirement Income Security Act).
- H. "Health care expenses" mean, for the purposes of this regulation, expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of issuers.
- I. "Insolvency" means, for the purposes of this regulation, when an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by court of competent jurisdiction in the issuer's state of domicile.

- J. "Issuer" includes, for the purposes of this regulation, insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.
- K. "Medicare" means, for the purposes of this regulation, "The Health Insurance for the Aged Act," Title XVIII of the federal "Social Security Act" as amended. This regulation does not cover amendments to this statute that were promulgated later than the effective date of this regulation.
- L. "Medicare Advantage plan" means, for the purposes of this regulation, a plan of coverage for health benefits under Medicare Part C as defined in the definition of Medicare Advantage plan in 42 U.S.C. Section 1395w-28(b)(1). Included are:
1. Coordinated care plans, which provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;
  2. Medical savings account plans coupled with a contribution into a Medicare Advantage medical savings account; and
  3. Medicare Advantage private fee-for-service plans.
- M. "Medicare supplement policy" means, for the purposes of this regulation, a group or individual policy of sickness and accident insurance or a subscriber contract of a hospital and medical service association or a health maintenance organization, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 et. seq.), or an issued policy under a demonstration project, specified in 42 U.S.C. Section 1395ss(g)(1), which is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare. "Medicare supplement policy" does not include Medicare Advantage plans established under Medicare Part C, Outpatient Prescription Drug plans established under Medicare Part D, or any Health Care Prepayment Plan (HCPP) that provides benefits pursuant to an agreement under Section 1833(a)(1)(A) of the Social Security Act.
- N. "Nurse" means, for the purposes of this regulation, a "graduate nurse", "practical nurse", "trained practical nurse", "licensed vocational nurse", "licensed practical nurse", "registered nurse" or "registered professional nurse" as defined under § 12-38-103, C.R.S.
- O. "Pre-standardized Medicare supplement benefit plan" or "pre-standardized plan" mean, for the purposes of this regulation, a group or individual policy of Medicare supplement insurance issued prior to May 1, 1992.
- P. "1990 Standardized Medicare supplement benefit plan" or "1990 plan" mean, for the purposes of this regulation, a group or individual policy of Medicare supplement insurance issued on or after May 1, 1992 and prior to June 1, 2010, and includes Medicare supplement insurance policies and certificates renewed on or after April 30, 1992 which are not replaced by the issuer at the request of the insured.
- Q. "2010 Standardized Medicare supplement benefit plan," "2010 standardized benefit plan," or "2010 plan" mean, for the purposes of this regulation, a group or individual policy of Medicare supplement insurance issued with an effective date for coverage issued on or after June 1, 2010.
- R. "Policy form" means, for the purposes of this regulation, the form on which the policy is delivered or issued for delivery by the issuer.

- S. "Public health plan" means, for the purposes of this regulation, any plan established or maintained by a State, the U.S. government, a foreign country, or any political subdivision of a State, the U.S. government, or a foreign country that provides health coverage to individuals who are enrolled in the plan.
- T. "Secretary" means, for the purposes of this regulation, the Secretary of the U.S. Department of Health and Human Services.

## **Section 5      Policy Definitions and Terms**

No policy or certificate may be identified in this state as a Medicare supplement policy or certificate unless such policy or certificate contains definitions or terms that conform to the requirements of this Section 5.

- A. "Accident," "accidental injury," or "accidental means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.
  - 1. The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."
  - 2. Such definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.
- B. "Benefit period" or "Medicare benefit period" shall not be defined more restrictively than as defined by Medicare.
- C. "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall not be defined more restrictively than as defined by Medicare.
- D. "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined by Medicare.
- E. "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act," Title XVIII of the federal "Social Security Act," as amended by the Social Security amendments of 1965, and as later amended or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as "The Health Insurance for the Aged Act," as then constituted and any later amendments or substitutes thereof," or words of similar import.
- F. "Medicare-eligible expenses" shall mean expenses of the kinds covered by Medicare, to the extent recognized as reasonable and medically necessary by Medicare.
- G. "Physician" shall not be defined more restrictively than as defined by Medicare.
- H. "Sickness" shall not be defined to be more restrictive than the following: "Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

## **Section 6      Policy Provisions**

- A. Except for permitted preexisting conditions clauses as described in Section 7.A.1., Section 8.A.1., and Section 8.1.A.1. of this regulation, no policy or certificate may be identified as a Medicare supplement policy if such policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.
- B. No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.
- C. No Medicare supplement policy or certificate in force in the state shall contain benefits that duplicate benefits provided by Medicare.
- D. Rules for Prescription Drugs
  - 1. Subject to Sections 7.A.4., 5. and 7. and 8.A.4. and 5., a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006 shall be renewed for current policyholders who do not enroll in Medicare Part D at the option of the policyholder.
  - 2. A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.
  - 3. After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:
    - a. The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under Medicare Part D; and
    - b. Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable.
- E. All Medicare supplement insurance policies shall provide for a refund of unearned premium, when the policy is replaced by another Medicare supplement carrier or given a request for cancellation by the insured.

**Section 7      Minimum Benefit Standards for Pre-Standardized Medicare Supplement Benefit Plan Policies or Certificates issued for Delivery Prior to May 1, 1992**

No policy or certificate may be identified as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits, which are not inconsistent with these standards.

**A.      General Standards**

The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

- 1. A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was

recommended by or received from a physician within six (6) months before the effective date of coverage.

2. A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.
3. A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare shall be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with such changes.
4. A "non-cancelable," "guaranteed renewable," or "non-cancelable and guaranteed renewable" Medicare supplement policy shall not:
  - a. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or
  - b. Be canceled or nonrenewed by the issuer solely on the grounds of deterioration of health.
5. Replacement, Termination, and Nonrenewal
  - a. Except as authorized by the Commissioner, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.
  - b. If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in Section 7.A.5.d., the issuer shall offer certificate holders an individual Medicare supplement policy. The issuer shall offer the certificate holder at least the following choices:
    - (1) An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and
    - (2) An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Section 8.1.B. of this regulation.
  - c. If membership in a group is terminated, the issuer shall:
    - (1) Offer the certificate holder such conversion opportunities as are described in Section 7.A.5.b.; or
    - (2) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.
  - d. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.



6. Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefits period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits shall not be considered in determining a continuous loss.
7. If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this Section 7.A.

**B. Minimum Benefit Standards**

1. Coverage of Medicare Part A eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period.
2. Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount.
3. Coverage of Medicare Part A eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days.
4. Upon exhaustion of all Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days.
5. Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Medicare Part B;
6. Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system (PPS), the copayment amount, of Medicare-eligible expenses under Medicare Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible.
7. Coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Medicare Part A, subject to the Medicare deductible amount.

**Section 8 Minimum Benefit Standards for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or after May 1, 1992 and with an Effective Date for Coverage Prior to June 1, 2010**

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after May 1, 1992 and with an effective date for coverage prior to June 1, 2010. No policy or certificate may be identified as a Medicare supplement policy or certificate unless it complies with these benefit standards.

- A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.
1. A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.
  2. A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.
  3. A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare shall be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with such changes.
  4. No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.
  5. Each Medicare supplement policy shall be guaranteed renewable and:
    - a. The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual;
    - b. The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation;
    - c. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Section 8.A.5.e., the issuer shall offer certificate holders an individual Medicare supplement policy which (at the option of the certificate holder):
      - (1) Provides for continuation of the benefits contained in the group policy; or
      - (2) Provides for such benefits as otherwise meets the requirements of this Section 8.A.
    - d. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:
      - (1) Offer the certificate holder the conversion opportunity described in Section 8.5.c.; or
      - (2) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.
    - e. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

- f. If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this Section 8.A.5.
- 6. Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits shall not be considered in determining continuous loss.
- 7. Suspension and reinstitution of Medicare supplement policies shall be in accordance with the following:
  - a. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act (Medicaid), but only if the policyholder or certificate holder notifies the issuer of such policy or certificate within ninety (90) days after the date the individual becomes entitled to such assistance.
  - b. If such suspension occurs and if the policyholder or certificate holder loses entitlement to such medical assistance, such policy or certificate shall be automatically reinstituted (effective as of the date of termination of such entitlement) as of the termination of such entitlement if the policyholder or certificate holder provides notice of loss of such entitlement within ninety (90) days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of such entitlement.
  - c. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in § 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of the loss of coverage within ninety (90) days after the date of the loss and pays the premium attributable to the period as of the date of the termination of such entitlement.
  - d. Reinstitution of such coverages as described in Section 8.A.7. b. and c.:
    - (1) Shall not provide for any waiting period with respect to treatment of preexisting conditions;
    - (2) Shall provide for resumption of coverage which is substantially equivalent to coverage in effect before the date of such suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstitution of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

- (3) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.
- 8. If an issuer makes a written offer to the Medicare supplement policyholders or certificate holders of one or more of its plans, to exchange during a specified period from his or her 1992 standardized plan as described in Section 9 of this regulation to a 2010 standardized plan as described in Section 9.1. of this regulation, the offer and subsequent exchange shall comply with the following requirements:
  - a. An issuer need not provide justification to the Commissioner if the insured replaces a 1992 standardized policy or certificate with an issue age rated 2010 standardized policy or certificate at the insured's original issue age and duration. If an insured's policy or certificate to be replaced is priced on an issue age rate schedule at the time of such offer, the rate charged to the insured for the new exchanged policy shall recognize the policy reserve buildup, due to the pre-funding inherent in the use of an issue age rate basis, for the benefit of the insured. The method proposed to be used by an issuer shall be filed with the Commissioner.
  - b. The rating class of the new policy or certificate shall be the class closest to the insured's class of the replaced coverage.
  - c. An issuer:
    - (1) Shall not apply new preexisting condition limitations or a new contestability period to the new policy for those benefits contained in the exchanged 1992 standardized policy or certificate of the insured; but
    - (2) May apply pre-existing condition limitations of no more than six (6) months to any added benefits only if this fact is clearly disclosed in the offer to the consumer.
  - d. The new policy or certificate shall be offered to all policyholders or certificate holders within a given plan; except where the offer or issue would be in violation of state or federal law.
- B. Standards for Basic ("Core") Benefits Common to All Benefit Plans A-J

Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare supplement insurance benefit plans in addition to the basic "core" package, but not in lieu thereof:

  - 1. Coverage of Medicare Part A eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;
  - 2. Coverage of Medicare Part A eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;
  - 3. Upon exhaustion of the Medicare inpatient hospital coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable PPS rate, or other appropriate

Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

4. Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations; and
5. Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a PPS, the copayment amount, of Medicare-eligible expenses under Medicare Part B regardless of hospital confinement, subject to the Medicare Part B deductible;

C. Standards for Additional Benefits. The following additional benefits shall be included in Medicare supplement benefit Plans B through J only as provided by Section 9 of this regulation:

1. Medicare Part A Deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period;
2. Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A;
3. Medicare Part B Deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement;
4. Eighty percent (80%) of the Medicare Part B Excess Charges: Coverage for eighty percent (80%) of the differences between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge;
5. One hundred percent (100%) of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge;
6. Basic Outpatient Prescription Drug Benefit: Coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty dollar (\$250) calendar year deductible, to a maximum of one thousand two hundred fifty dollars (\$1,250) in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may have been included for sale or issuance in a Medicare supplement policy until January 1, 2006;
7. Extended Outpatient Prescription Drug Benefit: Coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty dollar (\$250) calendar year deductible to a maximum of three thousand dollars (\$3,000) in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may have been included for sale or issuance in a Medicare supplement policy until January 1, 2006;
8. Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for eighty percent (80%) of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive

days of each trip outside the United States subject to calendar year deductible of two hundred fifty dollars (\$250) and a lifetime maximum benefit of fifty thousand dollars (\$50,000). For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset;

9. Preventive Medical Care Benefit

a. Coverage for the following preventive health services not covered by Medicare:

- (1) An annual clinical preventive medical history and physical examination that may include tests and services from Section 8.C.9.b. and patient education to address preventive health care measures; and
- (2) Preventive screening tests or preventive services, the selection and frequency of which is determined to be medically appropriate by the attending physician.

b. Reimbursement shall be for the actual charges up to one hundred percent (100%) of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of one hundred twenty dollars (\$120) annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare; and

10. At-Home Recovery Benefit: Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

a. For the purposes of this benefit, the following definitions shall apply:

- (1) "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.
- (2) "Care provider" means a duly qualified or licensed home health aide/homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses' registry.
- (3) "Home" shall mean any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.
- (4) "At-home recovery visit" means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a 24-hour period of services provided by a care provider is one (1) visit.

b. Coverage Requirements and Limitations

- (1) At-home recovery services provided must be primarily services, which assist in activities of daily living.

- (2) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.
- (3) Coverage is limited to:
  - (a) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare-approved home health care visits under a Medicare-approved home care plan of treatment;
  - (b) The actual charges for each visit up to a maximum reimbursement of forty dollars (\$40) per visit;
  - (c) One thousand six hundred dollars (\$1,600) per calendar year;
  - (d) Seven (7) visits in any one week;
  - (e) Care furnished on a visiting basis in the insured's home;
  - (f) Services provided by a care provider as defined in Section 8.C.10.a.(2);
  - (g) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded; and
  - (h) At-home recovery visits received during the period the insured is receiving Medicare-approved home care services or no more than eight (8) weeks after the service date of the last Medicare-approved home health care visit.

c. Coverage is excluded for:

- (1) Home care visits paid for by Medicare or other government programs; and
- (2) Care provided by family members, unpaid volunteers or providers who are not care providers.

D. Standards for Medicare Supplement Benefit Plans K and L

- 1. Standardized Medicare Supplement Benefit Plan K shall consist of the following:
  - a. Coverage of one hundred percent (100%) of the Medicare Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;
  - b. Coverage of one hundred percent (100%) of the Medicare Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;
  - c. Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare

Part A eligible expenses for hospitalization paid at the applicable PPS rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

- d. Medicare Part A Deductible: Coverage for fifty percent (50%) of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Section 8.D.1.j.;
  - e. Skilled Nursing Facility Care: Coverage for fifty percent (50%) of the coinsurance amount for each day used from the 21st through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Section 8.D.1.j.;
  - f. Hospice Care: Coverage for fifty percent (50%) of cost sharing for all Medicare Part A eligible expenses and respite care until the out-of-pocket limitation is met as described in Section 8.D.1.j.;
  - g. Coverage for fifty percent (50%), under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in Section 8.D.1.j.;
  - h. Except for coverage provided in Subparagraph i. below, coverage for the fifty percent (50%) of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Medicare Part B deductible until the out-of-pocket limitation is met as described in Section 8.D.1.j.;
  - i. Coverage of one hundred percent (100%) of the cost sharing for Medicare Part B preventive services after the policyholder pays the Medicare Part B deductible; and
  - j. Coverage of one hundred percent (100%) of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B. This amount may be indexed each year by the appropriate inflation adjustment by the Secretary of the U.S. Department of Health and Human Services.
2. Standardized Medicare Supplement Benefit Plan L shall consist of the following:
- a. The benefits described in Sections 8.D.1.a., b., c. and i.;
  - b. The benefits described in Sections 8.D.1.d., e., f., g., and h., but substituting seventy five percent (75%) for fifty percent (50%); and
  - c. The benefit described in Sections 8.D.1.j. but substituting the amount specified by the Secretary of the U.S. Department of Health and Human Services.

**Section 8.1      Benefit Standards for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery with an Effective Date for Coverage on or after June 1, 2010**



The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state with an effective date for coverage on or after June 1, 2010. No policy or certificate may be identified as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any 1992 Standardized Medicare supplement benefit plan for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued with an effective date for coverage before June 1, 2010 remain subject to the requirements of Section 8 of this regulation.

- A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation:
1. A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.
  2. A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.
  3. A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare shall be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with such changes.
  4. No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.
  5. Each Medicare supplement policy shall be guaranteed renewable and:
    - a. The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual; and
    - b. The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.
    - c. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Section 8.1.A.5.e., the issuer shall offer certificate holders an individual Medicare supplement policy which (at the option of the certificate holder):
      - (1) Provides for continuation of the benefits contained in the group policy; or
      - (2) Provides for such benefits as otherwise meets the requirements of this Section 8.1.A.
    - d. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:
      - (1) Offer the certificate holder the conversion opportunity described in Section 8.1.A.5.c.; or

- (2) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.
- e. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.
6. Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits shall not be considered in determining continuous loss.
7. Suspension and reinstatement of Medicare supplement policies shall be in accordance with the following:
  - a. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act (Medicaid), but only if the policyholder or certificate holder notifies the issuer of such policy or certificate within ninety (90) days after the date the individual becomes entitled to such assistance.
  - b. If such suspension occurs and if the policyholder or certificate holder loses entitlement to such medical assistance, such policy or certificate shall be automatically reinstituted (effective as of the date of termination of such entitlement) as of the termination of such entitlement if the policyholder or certificate holder provides notice of loss of such entitlement within ninety (90) days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of such entitlement.
  - c. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in § 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder provides notice of the loss of coverage within ninety (90) days after the date of the loss.
  - d. Reinstatement of such coverages as described in Sections 8.1.A. 7.b. and c.:
    - (1) Shall not provide for any waiting period with respect to treatment of preexisting conditions;
    - (2) Shall provide for resumption of coverage which is substantially equivalent to coverage in effect before the date of such suspension; and

- (3) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

B. Standards for Basic ("Core") Benefits Common to All Medicare Supplement Benefit Plans A, B, C, D, F, F with High Deductible, G, M, and N.

Every issuer of Medicare supplement insurance benefit plans shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare supplement insurance benefit plans in addition to the basic "core" package, but not in lieu of it:

1. Coverage of Medicare Part A eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;
2. Coverage of Medicare Part A eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;
3. Upon exhaustion of the Medicare inpatient hospital coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable PPS rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;
4. Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;
5. Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a PPS, the copayment amount, of Medicare-eligible expenses under Medicare Part B regardless of hospital confinement, subject to the Medicare Part B deductible; and
6. Hospice Care: Coverage of cost sharing for all Part A Medicare-eligible hospice care and respite care expenses.

C. Standards for Additional Benefits. The following additional benefits shall be included in Medicare supplement benefit Plans B, C, D, F, F with High Deductible, G, M, and N as provided by Section 9.1 of this regulation:

1. Medicare Part A Deductible: Coverage for one hundred percent (100%) of the Medicare Part A inpatient hospital deductible amounts per benefit period;
2. Medicare Part A Deductible: Coverage for fifty percent (50%) of the Medicare Part A inpatient hospital deductible amounts per benefit period;
3. Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post hospital skilled nursing facility care eligible under Medicare Part A;
4. Medicare Part B Deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement;

5. One hundred percent (100%) of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge; and
6. Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for eighty percent (80%) of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States subject to calendar year deductible of two hundred fifty dollars (\$250) and a lifetime maximum benefit of fifty thousand dollars (\$50,000). For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

**Section 9      Minimum Benefit Standards for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery After April 30, 1992 and with an Effective Date for Coverage Prior to June 1, 2010**

- A. An issuer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic core benefits, as defined in Section 8.B. of this regulation.
- B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in this state, except as may be permitted in Sections 9.G. and 24 of this regulation.
- C. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit Plans A through L listed in this section and conform to the definitions in Section 4 of this regulation. Each benefit shall be structured in accordance with the format provided in Section 8.B.8.C. or 8.D. and list the benefits in the order shown in this section. For the purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.
- D. An issuer may use, in addition to the benefit plan designations required in Section 9 C., other designations to the extent permitted by law.
- E. Make-up of benefit plans:
  1. Standardized Medicare Supplement Benefit Plan A shall be limited to the basic "core" benefits common to all benefit plans, as defined in Section 8.B. of this regulation;
  2. Standardized Medicare Supplement Benefit Plan B shall include only the following: The basic "core" benefits as defined in Section 8.B. of this regulation, plus the Medicare Part A deductible as defined in Section 8.C.1.;
  3. Standardized Medicare Supplement Benefit Plan C shall include only the following: The basic "core" benefits as defined in Section 8.B. of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as defined in Sections 8.C.1, 2., 3., and 8., respectively;
  4. Standardized Medicare Supplement Benefit Plan D shall include only the following: The basic "core" benefits as defined in Section 8.B. of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically

necessary emergency care in a foreign country and the at-home recovery benefit as defined in Sections 8.C.1., 2., 8., and 10., respectively;

5. Standardized Medicare Supplement Benefit Plan E shall include only the following: The basic "core" benefits as defined in Section 8.B. of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care benefit defined in Sections 8.C.1., 2., 8., and 9., respectively;
6. Standardized Medicare Supplement Benefit Plan F shall include only the following: The basic "core" benefits as defined in Section 8.B. of this regulation, plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, one hundred percent (100%) of the Medicare part B excess charges, and medically necessary emergency care in a foreign country as defined in Sections 8.C.1., 2., 3., 5., and 8., respectively;
7. Standardized Medicare Supplement Benefit High Deductible Plan F shall include only the following: one hundred percent (100%) of covered expenses following the payment of the annual high deductible Plan F deductible. The covered expenses include the "core" benefit as defined in Section 8.B. of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Sections 8.C.1., 2., 3., 5., and 8., respectively. The annual high deductible Plan F deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan F policy, and shall be in addition to any other specific benefit deductibles, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars (\$10);
8. Standardized Medicare Supplement Benefit Plan G shall include only the following: The basic "core" benefits as defined in Section 8.B. of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, eighty percent (80%) of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Sections 8.C.1., 2., 4., 8., and 10., respectively;
9. Standardized Medicare Supplement Benefit Plan H shall consist of only the following: The basic "core" benefits as defined in Section 8.B. of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, basic outpatient prescription drug benefit and medically necessary emergency care in a foreign country as defined in Sections 8.C.1., 2., 6., and 8., respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005;
10. Standardized Medicare Supplement Benefit Plan I shall consist of only the following: The basic "core") benefits as defined in Section 8.B. of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B excess charges, Basic Outpatient Prescription Drug Benefit, medically necessary emergency care in a foreign country and the at-home recovery benefit as defined in Sections 8.C.1., 2., 5., 6., 8., and 10., respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005;
11. Standardized Medicare Supplement Benefit Plan J shall consist of only the following: The basic "core" benefits as defined in Section 8.B. of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, Preventive Medical

Care and the at-home recovery benefit as defined in Sections 8.C.1., 2., 3., 5., 7., 8., 9., and 10., respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005; and

12. Standardized Medicare Supplement Benefit High Deductible Plan J shall consist of only the following: one hundred percent (100%) of covered expenses following the payment of the annual high deductible Plan J deductible. The covered expenses include "basic "core" benefits as defined in Section 8.B. of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended prescription drug benefit medically necessary emergency care in a foreign country, preventive medical care benefit and the at-home recovery benefit as defined in Sections 8.C.1., 2., 3., 5., 7., 8., 9., and 10., respectively. The annual high deductible Plan "J" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan J policy, and shall be in addition to any other specific benefit deductibles, and shall be based on a calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars (\$10). The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

F. Make-up of Medicare Supplement benefit plans K and L:

1. Standardized Medicare supplement benefit plan K shall consist of only those benefits described in Section 8.D.1.
2. Standardized Medicare supplement benefit plan L shall consist of only those benefits described in Section 8.D.2.

- G. New or Innovative Benefits: An issuer may, with the prior approval of the Commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies. The innovative benefit shall not include an outpatient prescription drug benefit.

**Section 9.1 Standard Medicare Supplement Plans for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery with an Effective Date for Coverage on or after June 1, 2010**

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state with an effective date for coverage on or after June 1, 2010. No policy or certificate may be identified as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of Section 9.

A. Standard plans issued on or after June 1, 2010 shall comply with the following standards:

1. An issuer shall make available to each prospective policyholder and certificate holder a policy or certificate form containing only the basic "core" benefits, as defined in Section 8.1.B. of this regulation.
2. If an issuer makes available any of the additional benefits described in Section 8.1.C. or offers standardized benefit Plans K or L (as described in Sections 9.1.E.8. and 9. of this

regulation) then the issuer shall make available to each prospective policyholder and certificate holder, in addition to a policy form or certificate form with only the basic "core" benefits as described in Section 9.1.A.1., a policy form or certificate form containing either standardized benefit Plan C (as described in Section 9.1.E.3. of this regulation or standardized benefit Plan F (as described in Section 9.1.E.5. of this regulation).

- B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in this state, except as may be permitted in Sections 9.1.F. and 24 of this regulation.
- C. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans A through L listed in this section and conform to the definitions in Section 4 of this regulation. Each benefit shall be structured in accordance with the format provided in Sections 8.1.B. and 8.1.C. of this regulation; or, in the case of plans K or L, in Sections 9.1.E.8. or 9. of this regulation and list the benefits in the order shown. For purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.
- D. In addition to the benefit plan designations required in Section 9.1.C., an issuer may use other designations to the extent permitted by law.
- E. Make-up of 2010 Standardized Benefit Plans:
  - 1. Standardized Medicare Supplement Benefit Plan A shall include only the following: The basic "core" benefits as described in Section 8.1.B. of this regulation.
  - 2. Standardized Medicare Supplement Benefit Plan B shall include only the following: The basic "core" benefits as defined in Section 8.1.B. of this regulation, plus one hundred percent (100%) of the Medicare Part A deductible as defined in Section 8.1.C.1. of this regulation.
  - 3. Standardized Medicare Supplement Benefit Plan C shall include only the following: The basic "core" benefits as defined in Section 8.1.B. of this regulation, plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B deductible and medically necessary emergency care in a foreign country as defined in Sections 8.1.C.1., 3., 4., and 6., of this regulation respectively.
  - 4. Standardized Medicare Supplement Benefit Plan D shall include only the following: The basic "core" benefits as defined in Section 8.1.B. of this regulation, plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in Sections 8.1.C. 1., 3., and 6., of this regulation respectively.
  - 5. Standardized Medicare Supplement Benefit Plan F shall include only the following: The basic "core" benefits as defined in Section 8.1.B. of this regulation, plus the Medicare Part A deductible, the skilled nursing facility care, one hundred percent (100%) of the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B Excess Charges, and medically necessary emergency care in a foreign country as defined in Sections 8.1.C.1., 3., 4., 5., and 6., of this regulation, respectively.
  - 6. Standardized Medicare Supplement Benefit High Deductible Plan F shall include only the following: one hundred percent (100%) of covered expenses following the payment of the annual high deductible set forth in Section 9.1.E.6.b.:

- a. The basic "core" benefits as defined in Section 8.1.B. of this regulation, plus the Medicare Part A deductible, the skilled nursing facility care, one hundred percent (100%) of the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B Excess Charges, and medically necessary emergency care in a foreign country as defined in Sections 8.1.C.1., 3., 4., 5., and 6., respectively.
  - b. The annual deductible in Plan F with High Deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the regular Plan F policy, and shall be in addition to any other specific benefit deductibles. The basis for the deductible shall be annual and shall be adjusted annually by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars (\$10).
- 7. Standardized Medicare Supplement Benefit Plan G shall include only the following: The basic "core" benefits as defined in Section 8.1.B. of this regulation, plus one hundred percent (100%) of the Medicare Part A deductible, the skilled nursing facility care, one hundred percent (100%) of the Medicare Part B Excess Charges, and medically necessary emergency care in a foreign country as defined in Sections 8.1.C.1., 3., 5., and 6., respectively. Effective January 1, 2020, the standardized benefit plans described in Section 9.2 A.4. of this regulation (Redesignated Plan G High Deductible) may be offered to any individual who was eligible for Medicare prior to January 1, 2020.
- 8. Standardized Medicare Supplement Benefit Plan K is mandated by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and shall include only the following:
  - a. Medicare Part A Hospital Coinsurance 61st to 90<sup>th</sup> days: Coverage of one hundred percent (100%) of the Part A inpatient hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;
  - b. Medicare Part A Hospital Coinsurance, 91st to 150th days: Coverage for one hundred percent (100%) of the Medicare Part A inpatient hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through 150th day in any Medicare benefit period;
  - c. Medicare Part A Hospitalization after 150 Days: Upon exhaustion of the Medicare inpatient hospital coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable PPS rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;
  - d. Medicare Part A Deductible: Coverage for fifty percent (50%) of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Section 9.1.E.8.j.;
  - e. Skilled Nursing Facility Care: Coverage for fifty percent (50%) of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Section 9.1.E.8.;



- f. Hospice Care: Coverage for fifty percent (50%) of cost sharing for all Part A Medicare-eligible expenses and respite care until the out-of-pocket limitation is met as described in Section 9.1.E.8.j.;
  - g. Blood: Coverage for fifty percent (50%), under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in Section 9.1.E.8.j.;
  - h. Medicare Part B Cost Sharing: Except for coverage provided in Section 9.1.E.8.j., coverage for fifty percent (50%) of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in Section 9.1.E.8.j.;
  - i. Medicare Part B Preventive Services: Coverage of one hundred percent (100%) of the cost sharing for Medicare Part B preventive services after the policyholder pays the Medicare Part B deductible; and
  - j. Cost Sharing after Out-of-Pocket Limits: Coverage of one hundred percent (100%) of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B. This amount may be indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.
9. Standardized Medicare Supplement Benefit Plan L is mandated by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and shall include only the following:
- a. The benefits described in Sections 9.1.E.8. a., b., c., and i. of this regulation;
  - b. The benefits described in Sections 9.1.E. 8. d., e., f., g., and h. but substituting seventy-five percent (75%) for fifty percent (50%); and
  - c. The benefit described in Sections 9.1.E. 8. j. of this regulation, but substituting the amount specified by the Secretary of the U.S. Department of Health and Human Services.
10. Standardized Medicare Supplement Benefit Plan M shall include only the following: The basic "core" benefits as defined in Section 8.1.B. of this regulation, plus fifty percent (50%) of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in Sections 8.1.C.2., 3., and 6. of this regulation, respectively.
11. Standardized Medicare Supplement Benefit Plan N shall include only the following: The basic "core" benefits as defined in Section 8.1.B. of this regulation, plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in Sections 8.1.C.1., 3., and 6. of this regulation, respectively, with copayments in the following amounts:
- a. The lesser of twenty dollars (\$20) or the Medicare Part B coinsurance or copayment for each covered health care provider office visit (including visits to medical specialists); and

- b The lesser of fifty dollars (\$50) or the Medicare Part B coinsurance or copayment for each covered emergency room visit; however, this copayment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.
- F. New or Innovative Benefits: An issuer may, with the prior approval of the Commissioner, offer policies or certificates with new or innovative benefits, in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits shall include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, are not otherwise available, and are cost-effective. Approval of new or innovative benefits must not adversely impact the goal of Medicare supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

**Section 9.2 Standard Medicare Supplement Benefit Plans for 2020 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery to Individuals Newly Eligible for Medicare on or After January 1, 2020**

The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) requires the following standards to be applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare on or after January 1, 2020. No policy or certificate that provides coverage of the Medicare Part B deductible may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020. All policies shall comply with the following benefit standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued to individuals eligible for Medicare before January 1, 2020, remain subject to the requirements of Section 9 and 9.1.

- A. Benefit Requirements. The standards and requirements of Section 9.1 shall apply to all Medicare supplement policies or certificates delivered or issued for delivery to individuals newly eligible for Medicare on or after January 1, 2020, with the following exceptions:
  - 1. Standardized Medicare supplement benefit Plan C is redesignated as Plan D and shall provide the benefits contained in Section 9.1.E.3. of this regulation but shall not provide coverage for one hundred percent (100%) or any portion of the Medicare Part B deductible.
  - 2. Standardized Medicare supplement benefit Plan F is redesignated as Plan G and shall provide the benefits contained in Section 9.1.E.5. of this regulation but shall not provide coverage for one hundred percent (100%) or any portion of the Medicare Part B deductible.
  - 3. Standardized Medicare supplement benefit Plans C, F, and F with High Deductible shall not be offered to individuals newly eligible for Medicare on or after January 1, 2020.
  - 4. Standardized Medicare supplement benefit Plan F With High Deductible is redesignated as Plan G With High Deductible and shall provide the benefits contained in Section 9.1.E.6. of this regulation but shall not provide coverage for one hundred percent (100%) or any portion of the Medicare Part B deductible; provided further that, the Medicare Part B deductible paid by the beneficiary shall be considered an out-of-pocket expense in meeting the annual high deductible.
  - 5. The reference to Plans C or F contained in Section 9.1.A.2. is deemed a reference to Plans D or G for purposes of this section.

- B. Applicability to Certain Individuals. This Section 9.2 applies only to individuals that are newly eligible for Medicare on or after January 1, 2020:
1. By reason of attaining age 65 on or after January 1, 2020; or
  2. By reason of entitlement to benefits under Medicare Part A pursuant to Section 226(b) or 226A of the Social Security Act, or who is deemed to be eligible for benefits under Section 226(a) of the Social Security Act on or after January 1, 2020.
- C. Guaranteed Issue for Eligible Persons. For purposes of Section 11.E., in the case of any individual newly eligible for Medicare on or after January 1, 2020, any reference to a Medicare supplement policy C or F (including Plan F With High Deductible) shall be deemed to be a reference to Medicare supplement policy D or G (including G With High Deductible), respectively, that meet the requirements of Section 9.2.A.
- D. Offer of Redesignated Plans to Individuals Other Than Newly Eligible. On or after January 1, 2020, the standardized benefit plans described in Section 9.2.A.4. above may be offered to any individual who was eligible for Medicare prior to January 1, 2020 in addition to the standardized plans described in Section 9.1.E. of this regulation.

## **Section 10      Open Enrollment**

- A. No issuer shall deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of such policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is both sixty-five (65) years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an issuer shall be made available to all applicants who qualify under this subsection regardless of age.
- B. No issuer shall deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of that policy or certificate because of the health status, claims experience, receipt of health care or medical condition of an applicant under age sixty-five (65), if the application for the policy or certificate is submitted prior to or during the six (6)-month period beginning with the first day of the first month during which the applicant becomes enrolled for benefits under Medicare Part B, without regard to age.
- C. Conditions under which benefits may be reduced or excluded:
1. If the applicant qualifies under either Section 10.A. or 10.B., submits an application during the applicable time period referenced in those subsections and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the issuer shall not exclude benefits based on a preexisting condition.
  2. If the applicant qualifies under either Section 10.A. or 10.B., submits an application during the applicable time period referenced in those subsections; and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Commissioner shall specify the manner of the reduction under this subsection.

- D. Each Medicare supplement policy and certificate currently available from an issuer shall be made available to all applicants to whom an issuer is required to issue a policy or certificate of Medicare supplement insurance.
- E. An issuer must demonstrate compliance with this section for each plan, type, and form level permitted under Section 14.C. by:
  - 1. Charging a premium rate for persons under age sixty-five (65) that does not exceed the highest available premium rate for each plan, type, and form level;
  - 2. Making a premium adjustment for persons under age sixty-five (65) that is equal to the premium adjustment for persons over age sixty-five (65); or
  - 3. Special Case. If the filing is to introduce a new product to Colorado, the issuer shall charge a premium rate for persons under age sixty-five (65) that is equal to 1.5 times the age sixty-five (65) premium rate.
- F. Each Medicare supplement issuer shall actively market Medicare supplement insurance during the open enrollment periods described in Section 10.B.
- G. No Medicare supplement issuer shall directly or indirectly engage in the following activities in respect to persons enrolled in Medicare Part B by reason of disability during the open enrollment periods described in Section 10.B.:
  - 1. Encouraging or directing such persons to refrain from filing an application for Medicare supplement insurance because of the health status, claims experience, receipt of health care or medical condition of the person; and/or
  - 2. Encouraging or directing such persons to seek coverage from another issuer because of the health status, claims experience, receipt of health care or medical condition of the person.
- H. Issuer may not vary the commission paid on the sale or renewal of a Medicare supplement insurance policy due to any factor, except first year or renewal status, including, but not limited to, the plan marketed, the insured's age, health status, claims experience, location of residence, receipt of health care, or medical condition. However, issuers may pay a different commission on a policy transferred to a different producer for servicing purposes, following the initial sale, or on a policy sold over the internet, providing there is no variation for any other reason.
- I. A Medicare supplement carrier shall provide reasonable compensation, as provided under the plan of operation of the program, to a producer, if any, for the sale, during the open enrollment periods described in Section 10.B., of a Medicare supplement insurance policy or certificate.
- J. No Medicare supplement insurance issuer shall terminate, fail to renew or limit its contract or agreement of representation with a producer for any reason related to the age, health status, claims experience, receipt of health care, or medical condition of an applicant, eligible by reason of Section 10.B. for Medicare supplement insurance, placed by a producer with the Medicare supplement insurance issuer.
- K. Except as provided in Section 10.C. and Section 22, Sections 10.A. and 10.B. shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective.

## **Section 11      Guaranteed Issue for Eligible Persons**

### **A.      Guaranteed Issue**

1.      Eligible persons are those individuals described in Section 11.B. who seek to enroll under the policy during the period specified in Section 11.C., and who submit evidence of the date of termination, or disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.
2.      With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in Section 11.E. that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

### **B.      Eligible Persons**

An eligible person is an individual described in any of the following examples:

1.      The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual because the individual leaves the plan;
2.      The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under Medicare Part C, and any of the following circumstances apply, or the individual is sixty-five (65) years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under § 1894 of the Social Security Act, and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare Advantage plan:
  - a.      The certification of the organization or plan under this part has been terminated;
  - b.      The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;
  - c.      The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856), or the plan is terminated for all individuals within an area;
  - d.      The individual demonstrates, in accordance with guidelines established by the Commissioner, that:
    - (1)      The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee, on a timely basis,

medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

- (2) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

- e. The individual meets such other exceptional conditions as the Commissioner may provide.

- 3. The individual is enrolled with any of the following and the enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under Section 11.B.2.:

- a. An eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost);
- b. A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;
- c. An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or
- d. An organization under a Medicare Select Policy.

- 4. The individual is enrolled under a Medicare supplement policy and the enrollment ceases due to:

- a. The insolvency of the issuer or bankruptcy of the non-issuer organization;
- b. Other involuntary termination of coverage or enrollment under the policy;
- c. The issuer of the policy substantially violating a material provision of the policy; or
- d. The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

- 5. Terminations and Reenrollments

- a. The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under Medicare Part C, any eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act, or a Medicare Select policy; and
- b. The subsequent enrollment under Section 11.B.5.a. is terminated by the enrollee during any period within the first twelve (12) months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under § 1851 e) of the federal Social Security Act);

6. The individual, upon first becoming eligible for benefits under Medicare Part A, enrolls in a Medicare Advantage plan under Medicare Part C, or with a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan or program by not later than twelve (12) months after the effective date of enrollment;
7. The individual enrolls in a Medicare Part D plan during the initial enrollment period and, at the time of enrollment in Medicare Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in Section 11.E.4.; or
8. An individual who is currently enrolled in both Medicare and Medicaid who loses eligibility for health benefits under Title XIX of the Social Security Act (Medicaid).

C. Guaranteed Issue Time Periods

1. In the case of an individual described in Section 11.B.1., whose cancellation was not due to nonpayment of premium or fraud, the guaranteed issue period begins on the later of:
  - a. The date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of a termination or cessation); or
  - b. The date that the applicable coverage terminates or ceases and ends six (6) months thereafter if they leave the plan involuntarily or sixty three (63) days if voluntary;
2. In the case of an individual described in Sections 11.B.2., 3., 5. or 6. whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date the individual receives notice of termination and six (6) months after the date the applicable coverage terminated;
3. In the case of an individual described in Section 11.B.4.a., the guaranteed issue period begins on the earlier of:
  - a. The date that the individual receives notice of termination, a notice of the issuer's bankruptcy or insolvency, or other similar notice if any, and
  - b. The date that the applicable coverage is terminated and ends on the date that is six (6) months after the date the coverage is terminated;
4. In the case of an individual described in Sections 11.B.2., 4.b., 4.c., 5. or 6. who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty (60) days before the disenrollment effective date and ends on the date that is sixty-three (63) days after the disenrollment effective date;
5. In the case of an individual described in Section 11.B.7., the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the sixty-day (60) period immediately preceding the initial Medicare Part D enrollment period and ends on the date that is sixty-three (63) days after the effective date of the individual's coverage under Medicare Part D; and
6. In the case of an individual described in Section 11.B. but not described in the preceding provisions of this subsection, the guaranteed issue period begins on the effective date of

the voluntary disenrollment and ends on the date that is sixty-three (63) days after the effective date. If the termination is involuntary (not due to nonpayment of premium or fraud), the guaranteed issue period begins on the effective date of involuntary termination and ends on the date that is six (6) months after the involuntary termination date.

D. Extended Medigap Access for Interrupted Trial Periods

1. In the case of an individual described in Section 11.B.5. (or deemed to be so described, pursuant to this paragraph) whose enrollment with an organization or provider described in Section 11.B.5.a. is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in Section 11.B.5.;
2. In the case of an individual described in Subsection 11.B.6. (or deemed to be so described, pursuant to this paragraph) whose enrollment with a plan or in a program described in Section 11.B.6. is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in Subsection 11.B.6.; and
3. For the purposes of Section 11.B.5. and 6., no enrollment of an individual with an organization or provider described in Subsection 11.B.5.a., or with a plan or in a program described in Section 11.B.6., may be deemed to be an initial enrollment under this paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program.

E. Products to Which Eligible Persons are Entitled. The Medicare supplement policy to which eligible persons are entitled under:

1. Sections 11.B.1., 2., 3. and 4., is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, F (including Plan F with a high deductible), K or L, offered by any issuer.
2. Reenrollments
  - a. Subject to Section 11.B.5.b., is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Section 11.E.1.
  - b. After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in this subparagraph is:
    - (1) The policy available from the same issuer but modified to remove outpatient prescription drug coverage; or
    - (2) At the election of the policyholder, a Plan A, B, C, F (including Plan F with a high deductible), K or L policy that is offered by the any issuer.
3. Section 11.B.6. shall include any Medicare supplement policy offered by any issuer.
4. Section 11.B.7. is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including Plan F with a high deductible), K or L and that is offered and is



available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient drug coverage.

**F. Notification Provisions**

1. At the time of an event described in Section 11.B. causing an individual to lose coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Section 11.A. Such notice shall be communicated contemporaneously with the notification of termination.
2. At the time of an event described in Section 11.B. causing an individual to cease enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Section 11.A. Such notice shall be communicated within ten (10) working days of the issuer receiving notification of disenrollment.

**Section 12 Standards for Claims Payment**

- A. An issuer shall comply with Section 1882(c)(3) of the Social Security Act (as enacted by Section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA) 1987, Pub. L., No. 100-203) by:
1. Accepting notice from a Medicare carrier on dually assigned claims submitted by participating providers and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in the notice;
  2. Notifying the participating provider or supplier and the beneficiary of the payment determination;
  3. Paying the participating provider or supplier directly;
  4. Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;
  5. Paying user fees for claim notices that are transmitted electronically or otherwise; and
  6. Providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.
- B. Compliance with the requirement set forth in Section 12.A. above shall be certified on the Medicare supplement insurance experience reporting form.

**Section 13 Loss Ratio Standards and Refund or Credit of Premium**

**A. Loss Ratio Standards**

1. Lifetime Requirements

- a. Indemnity Forms: A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate forms:
  - (1) Group Policies: At least seventy-five percent (75%) of the aggregate amount of premiums earned in the case of group policies; or
  - (2) Individual Policies: At least sixty-five (65%) percent of the aggregate amount of premiums earned in the case of individual policies.
- b. HMOs: Calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by a health maintenance organization shall not include:
  - (1) Home office and overhead costs;
  - (2) Advertising costs;
  - (3) Commissions and other acquisition costs;
  - (4) Taxes;
  - (5) Capital costs;
  - (6) Administrative costs; and
  - (7) Claims processing costs.
- 2. Historical Requirement (Standardized Forms): All filings of rates and rating schedules shall demonstrate that the ratio of incurred claims to earned premiums from inception of the form(s) to the last date of the experience period (historical loss ratio) comply with the requirements of Section 13.A.1. or provide acceptable justification as to why this historical requirement has not yet been met. If this requirement has not been demonstrated, the rate filing will be disapproved.
- 3. Future Period Requirement (Standardized Forms): All filings of proposed rate revisions shall also demonstrate that the anticipated loss ratio for each year of the entire future period for which the revised rates are computed to provide coverage can be expected to meet or exceed the loss ratio requirements from Section 13.A.1., or provide acceptable justification as to why this future period requirement has not been met. All assumptions underlying the projected future experience should be clearly supported. These include lapse, mortality, morbidity, etc. If this requirement has not been demonstrated, the rate filing will be disapproved.
- 4. For purposes of applying Sections 13.A.1. and 14.C.3. only, group certificates issued as a result of solicitations of individuals through the mail or by mass media advertising (including both print and broadcast advertising) shall be required to comply with the group Medicare supplement requirements.

5. Pre-Standardized Plans: For policies issued prior to May 1, 1992, the ratio of incurred claims to earned premiums (loss ratio) shall comply with all of the following requirements. If compliance with these requirements is not demonstrated, the rate filing will be disapproved.
  - a. Historical Requirement: All filings of rates and rating schedules shall demonstrate that the ratio of incurred claims to earned premiums from inception of the form(s) to the last date of the experience period (historical loss ratio) is greater than or equal to the originally filed loss ratio for the form(s), or provide acceptable justification as to why this historical requirement has not yet been met;
  - b. Historical Requirement Since April 1, 1996: All filings of rates and rating schedules shall demonstrate that the historical loss ratio since April 1, 1996 meets the appropriate loss ratio requirement from Section 13.A.1. as applied to the actual experience beginning with April 1, 1996 to the last date of the experience period;
  - c. Future Period Requirement: All filings of proposed rate revisions shall also demonstrate that the anticipated loss ratio for each year of the entire future period for which the revised rates are computed to provide coverage can be expected to meet or exceed the loss ratio requirements from Section 13.A.1. All assumptions underlying the projected future experience should be clearly supported. These include lapse, mortality, morbidity, etc.; and
  - d. Lifetime Requirement: All filings of rates and rating schedules shall also demonstrate that the ratio of incurred claims to earned premiums from inception of the form(s) to the last date of the entire future period for which the revised rates are computed to provide coverage can be expected to meet or exceed the originally filed loss ratio for the form(s). All assumptions underlying the projected future experience should be clearly supported. These include lapse, mortality, morbidity, etc.
6. Experience Data
  - a. Each Medicare supplement issuer shall file the 2010 standardized plans concurrently with the 1990 standardized plans. The rates for the 1990 plans and the 2010 plans shall be submitted in separate filings via SERFF (the NAIC's System for Electronic Rates and Forms Filing).
  - b. Each Medicare supplement issuer shall provide pooled experience of all 1990 standardized plans with the experience of all the 2010 standard plans of the same letter and type as well as the experience for just the 1990 standardized plans or 2010 standardized plans separately in each filing.
  - c. Issuers are allowed to vary rate increases between the 1990 plans and the 2010 plans of the same letter, as long as they follow the guidelines listed above; that is, as long as the adjustments within the pool are on a revenue neutral basis and as long as it results in the 1990 plan rates to move closer to the 2010 plan rates.
7. Rate filings for each plan, type, and form level permitted under Section 10.C. for standardized plans marketed after February 1, 2005, must demonstrate compliance with the requirements of Section 10.E.

B. Refund or Credit Calculation

1. An issuer shall collect and file with the Commissioner by May 31 of each year the data contained in the applicable reporting form contained in Appendix A for each type of standard Medicare supplement benefit plan.
2. If, on the basis of the experience as reported, the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.
3. For the purposes of this subsection, policies or certificates issued prior to May 1, 1992, the issuer shall make the refund or credit calculation separately for all individual policies combined and all other group policies combined for experience after April 1, 1996.-
4. A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a *de minimis* level. The refund shall include interest from the end the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

C. Annual Filing of Premium Rates

An issuer of Medicare supplement policies and certificates issued in this state shall file, on an annual basis, its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the Commissioner in accordance with the filing requirements and procedures prescribed by the Commissioner. The supporting documentation shall also demonstrate, in accordance with actuarial standards of practice using reasonable assumptions, that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third-year loss ratio, which is greater than or equal to the applicable percentage, shall be demonstrated for policies or certificates in force less than three (3) years.

As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the Commissioner in accordance with the applicable filing procedures of this state:

1. Appropriate premium adjustments necessary to produce loss ratios as anticipated for current premium for the applicable policies or certificates. The supporting documents as necessary to justify the adjustment shall accompany the filings.
2. An issuer shall make such premium adjustments as are necessary to produce an expected loss ratio under such policy or certificate as will conform with minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment, which would modify the loss ratio experience under the policy, other than the adjustments described herein, shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.
3. If an issuer fails to make premium adjustments acceptable to the Commissioner, the Commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this section.

4. Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificates.

D. Public Hearings

The Commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued in this state if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for such reporting period. Public notice of such hearing shall be furnished in a manner deemed appropriate by the Commissioner.

**Section 14 Filing and Approval of Policies and Certificates and Premium Rates**

- A. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the Commissioner in accordance with filing requirements and procedures prescribed by the Commissioner.
- B. An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the Commissioner in the state in which the policy or certificate was issued.
- C. An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the Commissioner in accordance with the filing requirements and procedures prescribed by the Commissioner.
- D. Issuers have the option of offering Medicare supplement plans on an attained age basis, issue age basis, or a dual rating basis. Issuers are required to provide adequate information to consumers so an informed choice can be made on their Medicare Supplement purchases.

If an issuer elects to offer dual rating methodologies, the issuer must comply with the following requirements:

1. Under individual insurance policies, the individual policyholder should have a choice as to whether to elect an issue age or attained age rating methodology. For a group policy, it is the group policyholder, not the certificate holder, who has this choice. However, both methodology options shall be presented to each individual or group policyholder prior to purchase.
2. Issuers shall develop materials that disclose both rating methodologies and also include an explanation of how they differ both in the near term and the long term. Producers shall carefully explain to the prospective individual or group policyholder the difference between the two (2) rating methodologies and explain their rights to switch from one rating methodology to another. All marketing material and/or advertisements shall be submitted to the Division of Insurance for review and must demonstrate the differences between the two (2) rating methodologies.
3. The producer commissions shall be the same for both methodologies. The dollar level of first-year commissions shall be no more than twice the dollar level of second-year commissions and shall not vary based on the rating methodology elected by the individual or group policyholder. Renewal commissions for years two (2) through six (6)

may be a constant dollar amount that does not vary based on the rating methodology or must be defined as a constant percentage of the issue age premium.

4. Individual and group policyholders should be allowed to switch from an attained age rating methodology to an issue age rating methodology. However, individuals or group policyholders shall not be allowed to switch from an issue age rating methodology to an attained age rating methodology.
  5. The attained age and issue age rates shall be demonstrated to be actuarially equivalent and to prospectively achieve the loss ratio requirements.
- E. Limitations on the number of forms that may be approved for standardized Medicare supplement benefit plans.
1. Except as provided in Section 14.E.2., an issuer shall not file for approval more than one (1) form of a policy or certificate of each type for each standard Medicare supplement benefit plan.
  2. An issuer may offer, with the approval of the Commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:
    - a. The inclusion of new or innovative benefits;
    - b. The addition of either direct response or producer marketing methods;
    - c. The addition of either guaranteed issue or underwritten coverage; and
    - d. The offering of coverage to individuals eligible for Medicare by reason of disability.
  3. For the purposes of Section 14.E., a "type" means an individual policy or a group policy, an individual Medicare Select policy, or a group Medicare Select policy.
- F. Rules for Medicare supplement benefit plans considered available for purchase versus discontinued plans.
1. Except as provided in Section 14.F.1.a., an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this regulation that has been approved by the Commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.
    - a. An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the Commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the Commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this state.
    - b. An issuer that discontinues the availability of a policy form or certificate form pursuant to Section 14.F.1.a. shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the Commissioner of the discontinuance. The period of

discontinuance may be reduced if the Commissioner determines that a shorter period is appropriate.

2. The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.
  3. A change in the rating structure or methodology shall be considered a discontinuance under Section 14.F.1. unless the issuer complies with the following requirements:
    - a. The issuer provides an actuarial memorandum, in a form and manner prescribed by the Commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates; and
    - b. The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The Commissioner may approve a change to the differential which is in the public interest.
- G. Each filing of premium rates will include applicable experience as outlined below.
1. Except as provided in Section 14.G.2., the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Section 13 of this regulation.
  2. Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.
- H. Each filing of premium rates is expected to include the following items for each policy form included in the filing. Filings not containing these items may be returned to the filing company as incomplete.
1. The expected loss ratio by duration for the life of the policy form. These durational expected loss ratios will be evaluated for reasonableness.
  2. Each rate filing shall compare the actual to the expected loss ratio by duration since inception of the policy form. This comparison should:
    - a. Be prepared on a calendar year basis including a row for each duration and a total row including the expected overall loss ratio for that calendar year; and
    - b. Include a summary comparison over all durations, including the overall expected loss ratio over all durations.
- This analysis is considered to be most important in the final decision to approve or disapprove a rate increase request.
3. Each rate filing shall demonstrate that the third year, and each subsequent year, loss ratio, for policies in force for three years or longer, is greater than or equal to the applicable percentage in Section 13.A.1.a. or 2., or provide acceptable justification as to why this requirement has not yet been met.

4. Each rate filing shall include all the actuarial memorandum requirements found in Colorado Insurance Regulation 4-2-11.
- I. Each Medicare supplement rate filing submitted in Colorado, including annual rate filings, shall include the following Actuarial Certification on a separate page of the rate filing:
    1. To the best of my knowledge and judgment, the following are true with respect to this Medicare supplement rate filing;
    2. The assumptions present my best judgment as to the expected value for each assumption and are consistent with the issuer's business plan at the time of the filing;
    3. The anticipated lifetime loss ratio, future loss ratios, and third year loss ratios all equal or exceed the applicable required loss ratio in Colorado;
    4. The filed rates maintain the proper relationship between policies which were originally filed with differing rating methodologies;
    5. The filing was prepared based on current standards of practice as promulgated by the Actuarial Standards Board, including the data quality standard of practice;
    6. The filing is in compliance with applicable Colorado laws and regulations;
    7. The rates are reasonable in relationship to benefits; and
    8. A qualified actuary shall sign and date the certification. The actuary's professional credentials and company affiliation should be included below the signature.
  - J. The full credibility standard for Medicare supplement policies is 2000 life-years, and 2000 claims, for rating purposes. These standards must be met in a maximum of three (3) years. Any filing which bases its conclusions on data not meeting these standards is considered not fully credible unless the issuer can justify a lesser standard of full credibility. If the underlying data is not fully credible, for purposes of rate filings only, the filing should aggregate the underlying data according to the following requirements. Once the data has been aggregated, for purposes of rate filings, the data is expected to be aggregated in the same manner for all future rate filings unless further aggregation is necessary to achieve full credibility. Each rate filing must discuss how the data relied upon for the rate revision meets the Colorado data credibility requirement.
    1. Pre-standardized Forms: If experience for the pre-standardized forms is not fully credible by form, the experience should be combined over all pre-standardized forms. If the combined experience is still not fully credible, the experience must be:
      - a. Combined with the experience for similar pre-standardized forms marketed by an affiliated company; or
      - b. Combined with experience for the standardized forms.
    2. Standardized Forms: If experience for a standardized form is not fully credible, experience should be either aggregated with the experience of the most similar standardized form(s) to achieve full credibility; or aggregated over all standardized forms. If the experience has been aggregated over all standardized forms to achieve the credibility standard, the indicated increase, following the aggregate analysis, may be allocated over the standardized forms in a manner to be determined by the issuer, providing that the sum of the proposed increases over all forms, is numerically equal to the indicated amount from the aggregate analysis. This allows the rate relationships over



forms to remain reasonable. Rate changes for all affected standardized forms should be made concurrently.

3. Alternative Means: If full credibility cannot be achieved using the above methodology, a weighted average approach should be incorporated in determining a reasonable rate increase. The issuer should assign the maximum weight possible to the Colorado data and use an acceptable alternative data source to compliment this data.

K. The following items will be evaluated in determining the acceptability of a rate change request:

1. All of the required items from Colorado Insurance Regulation 4-2-11, in particular support for each of the underlying rating assumptions, such as the persistency and trend assumptions, used to calculate the earned premiums and incurred claims.
2. A discussion as to how the underlying data meets the Colorado credibility requirement. Please see Section 14.J. of this regulation. Any rate change request, which bases its conclusions on data that is not fully credible, must discuss how the rate change request was modified for less than fully credible data. If the data is aggregated to meet the credibility requirement, the aggregated data should be used to demonstrate that the requirements of Sections 14.K. 3., 4., and 5. have been met.
3. The presentation as to how the rates for each year of the projection period were determined. These rates must be calculated using expected loss ratios greater than or equal to the composite expected loss ratios by duration that were derived from the expected loss ratios included in the original rate filing for the block of business, unless the issuer provides acceptable justification and support as to why these ratios are inappropriate. A composite weighted average of loss ratios that are greater than or equal to the originally filed expected loss ratios may be used for aggregated blocks of business, with an explanation as to how the expected loss ratios were determined.
4. A demonstration that the historical loss ratio, the loss ratios for each year of the projection period and the lifetime loss ratio are greater than or equal to the minimum loss ratio requirements from Section 13.A. of this regulation must be included as part of the rate change request.
5. The actual-to-expected loss ratio analysis for each calendar year by issue year, required by Section 14.H. of this regulation, must be included as part of the rate change request. In order for the rate change request to be considered, the overall actual-to-expected loss ratio for the most recent full calendar year, and for the current partial calendar year if historical data is provided, must be greater than or equal to 1.0 or, in cases where this ratio is less than 1.0, an acceptable reason(s) as to why the rate change request should be considered must accompany the rate change request.
6. Rates for the category "under age 65" must be calculated using Section 10.E. of this regulation and the expected loss ratio as described in Section 14.K.5. must be used to calculate the "indicated premiums" for each plan.

L. Rates and policy forms shall be submitted electronically in a form specified by the Division.

## **Section 15 Permitted Compensation Arrangements**

- A. An issuer or other entity may provide commission or other compensation to a producer or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than two hundred percent (200%) of the

commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

- B. The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and must be provided for at least five (5) renewal years.
- C. No issuer or other entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.
- D. For purposes of this section, "compensation" includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards, and finders fees.

## **Section 16      Required Disclosure Provisions**

### **A.      General Rules**

- 1. Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of such provision shall be consistent with the type of contract to be issued. The provision shall be appropriately captioned, and shall appear on the first page of the policy and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's or certificate holder's age.
- 2. Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured or exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.
- 3. A Medicare supplement policy or certificate shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.
- 4. If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."
- 5. Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason. Such notice shall include in bold face type the address and telephone number of the Colorado Division of Insurance and a statement that in the event the issuer does not

refund the premium within thirty (30) days from the date such refund is requested, the Division should be informed accordingly.

6. Guide to Health Insurance for People with Medicare

- a. Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a "Guide to Health Insurance for People with Medicare" ("Guide") in the form developed jointly by the National Association of Insurance Commissioners and Centers for Medicare and Medicaid Services and in a type size no smaller than twelve (12) point type. Delivery of the Guide shall be made whether or not such policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this regulation. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgment of receipt of the Guide shall be obtained by the issuer. Direct response issuers shall deliver the Guide to the applicant upon request but not later than the time the policy is delivered.
- b. For the purposes of this section, "form" means the language, format, size, type size, type proportional spacing, bold character, and line spacing.

B. Notice Requirements

1. As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificate holders of modifications it has made to Medicare supplement policies or certificates in a format acceptable to the Commissioner. The notice shall:
  - a. Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate; and
  - b. Inform each policyholder or certificate holder as to when any premium adjustment is to be made due to changes in Medicare.
2. The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.
3. The notices shall not contain or be accompanied by any solicitation.

C. Medicare Modernization Act (MMA) Notice Requirements

Issuers shall comply with any and all notice requirements of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

D. Outline of Coverage Requirements for Medicare Supplement Policies

1. Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgment of receipt of such outline from the applicant; and
2. If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall

accompany such policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name.

"NOTICE. Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage provided upon application and the coverage originally applied for has not been issued."

3. The outline of coverage provided to applicants pursuant to this subsection consists of four (4) parts: cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than twelve (12) point type. All plans shall be shown on the cover page, and the plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.
4. The outline of coverage shall include all of the items contained in Appendix B.

**E. Notice Regarding Policies or Certificates which are not Medicare Supplement Policies**

1. Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy or a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 et seq.); disability income policy; or other policy identified in Section 3.B. of this regulation, issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insured under the policy, or if no outline of coverage is delivered, to the first page of the policy or certificate delivered to insureds. The notice shall be in no less than twelve (12) point type and shall contain the following language:

THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from [issuer]."

2. Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in Section 16.E.1. shall disclose, using the applicable statement in Appendix E, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

**Section 17 Requirements for Application Forms and Replacement Coverage**

- A. Application forms shall include the following statements and questions designed to elicit information as to whether, as of the date of the application, the applicant currently has a Medicare supplement, Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace or be in addition to any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and producer containing such questions and statements may be used.

[Statements]

1. You do not need more than one Medicare supplement policy.

2. If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.
3. You may be eligible for benefits under Medicaid or may not need a Medicare supplement policy.
4. If, after purchasing the policy, you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy can be suspended, if requested during your entitlement to benefits under Medicaid for twenty four (24) months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstituted if requested within 90 days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.
5. If you are eligible for, and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstituted if requested within 90 days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.
6. Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

[Questions]

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. PLEASE ANSWER ALL QUESTIONS.

[Please mark "Yes" or "No" below with an "X"]

(1) To the best of your knowledge,

(a) Did you turn age 65 in the last 6 months?

Yes\_\_\_\_ No\_\_\_\_

(b) Did you enroll in Medicare Part B in the last 6 months?

Yes\_\_\_\_ No\_\_\_\_

If yes, what is the effective date? \_\_\_\_\_

- (2) Are you covered for medical assistance through the state Medicaid program?

[NOTE TO APPLICANT: If you are participating in a "Spend-Down Program" and have not met your "Share of Cost," please answer NO to this question.]

Yes\_\_\_\_ No\_\_\_\_

If yes,

- (1) Will Medicaid pay your premiums for this Medicare supplement policy?

Yes\_\_\_\_ No\_\_\_\_

- (2) Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?

Yes\_\_\_\_ No\_\_\_\_

- (3) If you had coverage from any Medicare plan other than original Medicare within the past 6 months (for example, a Medicare Advantage plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

START \_\_/\_\_/\_\_ END \_\_/\_\_/\_\_

- (a) If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?

Yes\_\_\_\_ No\_\_\_\_

- (b) Was this your first time in this type of Medicare plan?

Yes\_\_\_\_ No\_\_\_\_

- (c) Did you drop a Medicare supplement policy to enroll in this Medicare plan?

Yes\_\_\_\_ No\_\_\_\_

- (d) Has your coverage under the previous plan been involuntarily terminated for reasons other than nonpayment of premiums or for fraud?

Yes\_\_\_\_ No \_\_\_\_

- (4) Do you have another Medicare supplement policy in force?

Yes\_\_\_\_ No\_\_\_\_

- (a) If so, with what company, and what plan do you have [optional for Direct Mailers]?

- \_\_\_\_\_
- (b) If so, do you intend to replace your current Medicare supplement policy with this policy?

Yes\_\_\_\_ No\_\_\_\_

- (5) Have you had coverage under any other health insurance within the past 6 months? (For example, an employer, union, or individual plan.)

Yes\_\_\_\_ No\_\_\_\_

- (a) If so, with what company and what kind of policy?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (b) What are your dates of coverage under the other policy?

START \_\_/\_\_/\_\_ END \_\_/\_\_/\_\_

(If you are still covered under the other policy, leave "END" blank.)

- (c) Has your coverage under a previous policy been involuntarily terminated for reasons other than nonpayment of premiums or for fraud?

Yes\_\_\_\_ No \_\_\_\_

- B. Producers shall list any other health insurance policies they have sold to the applicant.

1. List policies sold which are still in force.
2. List policies sold in the past five (5) years which are no longer in force.

- C. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the issuer, shall be returned to the applicant by the issuer upon delivery of the policy.

- D. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its producer, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One (1) copy of such notice signed by the applicant and producer, except where the coverage is sold without a producer, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

- E. The Notice to Applicant Regarding Replacement of Medicare Supplement Insurance or Medicare Advantage, in Appendix C, required by Section 17.D. for an issuer, shall be provided in the format

prescribed and separately adopted by the Commissioner of Insurance, in no less than twelve (12) point type.

- F. Paragraphs 1. and 2., contained in such Notice to the Applicant Regarding Replacement of Medicare Supplement Insurance, (applicable to preexisting conditions), in Appendix C, may be deleted by an issuer if the replacement does not involve the application of a new preexisting condition limitation.

## **Section 18      Filing Requirements for Advertising**

- A. An issuer shall provide a copy of any Medicare supplement advertisement intended for use in this state whether through written, radio, television, websites, other media or sales presentations, to the Commissioner for review. Such advertisement shall comply with all applicable requirements of Colorado Division of Insurance Regulation 4-2-3, and related guidelines as amended.
- B. Such advertisements shall also include a disclosure that all Medicare supplement standardized plans are offered to qualified individuals under the age of 65, or a disclosure that all Medicare supplement standardized plans are offered to Medicare qualified individuals due to disability and must be clearly visible in the advertisement or web page.
- C. This disclosure shall be presented in a clear, conspicuous and reasonably understandable manner, and designed to call attention to the nature and significance of the information it contains. The disclosure is considered designed to call attention to the nature and significance of the information in it if the issuer:
  - 1. Uses a typeface and type size that are easy to read;
  - 2. Provides wide margins and ample line spacing;
  - 3. Uses boldface, italics, underscoring, or capitals for key words and phrases; and
  - 4. In a form that combines the disclosure with other information, uses a plain-language heading to call attention to the disclosure portion of the document, and uses a type size that is greater than the type size predominantly used in the rest of the document.
- D. Advertising shall be submitted electronically in a format specified by the Division.

## **Section 19      Standards for Marketing**

- A. An issuer, directly or through its producers, shall:
  - 1. Establish marketing procedures to assure that any comparison of policies by its producers will be fair and accurate;
  - 2. Establish marketing procedures to assure excessive insurance is not sold or issued;
  - 3. Display prominently by type, stamp or other appropriate means, on the first page of the policy the following:

"Notice to buyer. This policy may not cover all of your medical expenses;"
  - 4. Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance; and



5. Establish auditable procedures for verifying compliance with this Section 19.A.
- B. In addition to the practices prohibited in § 10-3-1104, C.R.S., the following acts and practices are prohibited:
1. Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or issuers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another issuer.
  2. High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.
  3. Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance producer or insurance company.
- C. The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and words of similar import shall not be used unless the policy is being marketed and issued in compliance with this regulation.

## **Section 20      Appropriateness of Recommended Purchase and Excessive Insurance**

- A. In recommending the purchase or replacement of any Medicare supplement policy or certificate, a producer shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.
- B. Any sale of a Medicare supplement policy or certificate that will provide an individual more than one Medicare supplement policy or certificate is prohibited.
- C. An issuer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Medicare Part C coverage.

## **Section 21      Reporting of Multiple Policies**

- A. On or before March 1 of each year, an issuer shall report to the Division, using the Reporting Medicare Supplement Policies Form prescribed and separately adopted by the Commissioner of Insurance (Appendix D), which provides the following information for every individual resident of this state for which the issuer has in force more than one Medicare supplement policy or certificate.
1. Policy and certificate number, and
  2. Date of issuance.
- B. The items set forth above must be grouped by individual policyholder.
- C. An issuer must only submit a report if there are consumers that have more than one Medicare Supplement policy or certificate.

**Section 22      Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates**

- A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate for similar benefits to the extent such period had elapsed under the original policy or certificate.
- B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods for benefits similar to those contained in the original policy or certificate.

**Section 23      Readability Standards**

A Medicare supplement policy shall meet the following readability standards:

- A. The text must achieve a minimum score of 40 on the Flesch reading ease test;
- B. The policy shall be printed, except for specification pages, schedules and tables, in not less than ten (10) point type, one point leaded;
- C. The style, arrangement and overall appearance of the policy shall not give undue prominence to any portion of the text of the policy or to any endorsement or riders; and
- D. The policy shall contain a table of contents or an index of the principal sections of the policy if the policy has more than 3,000 words printed on three (3) or fewer pages of text or if the policy has more than three (3) pages regardless of the number of words.

**Section 24      Medicare Select Policies and Certificates**

- A. This section shall apply to Medicare Select policies and certificates, as defined in this section.
- B. No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.
- C. For the purposes of this section:
  - 1. "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.
  - 2. "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.
  - 3. "Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.
  - 4. "Medicare Select policy" or "Medicare Select certificate" mean, respectively, a Medicare supplement policy or certificate that contains restricted network provisions.
  - 5. "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

6. "Restricted network provision" means any provision, which conditions the payment of benefits, in whole or in part, on the use of network providers.
  7. "Service area" means the geographic area approved by the Commissioner within which an issuer is authorized to offer a Medicare Select policy.
- D. The Commissioner may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the Commissioner finds that the issuer has satisfied all of the requirements of this regulation.
- E. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the Commissioner.
- F. A Medicare Select issuer shall file a proposed plan of operation with the Commissioner in a format prescribed by the Commissioner. The plan of operation shall contain at least the following information:
1. Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:
    - a. Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.
    - b. The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:
      - (1) To deliver adequately all services that are subject to a restricted network provision; or
      - (2) To make appropriate referrals.
    - c. There are written agreements with network providers describing specific responsibilities.
    - d. Emergency care is available twenty-four (24) hours per day and seven (7) days per week.
    - e. In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This Subparagraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.
  2. A statement or map providing a clear description of the service area.
  3. A description of the grievance procedure to be utilized.
  4. A description of the quality assurance program, including:

- a. The formal organizational structure;
  - b. The written criteria for selection, retention and removal of network providers; and
  - c. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.
- 5. A list and description, by specialty, of the network providers.
- 6. Copies of the written information proposed to be used by the issuer to comply with Section 24.I.
- 7. Any other information requested by the Commissioner.
- G. A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the Commissioner prior to implementing the changes. Changes shall be considered approved by the Commissioner after thirty (30) days unless specifically disapproved. An updated list of network providers shall be filed with the Commissioner at least quarterly.
- H. A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:
  - 1. The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and
  - 2. It is not reasonable to obtain services through a network provider.
- I. A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.
- J. A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:
  - 1. An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:
    - a. Other Medicare supplement policies or certificates offered by the issuer; and
    - b. Other Medicare Select policies or certificates.
  - 2. A description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.
  - 3. A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in Plans K and L.
  - 4. A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

5. A description of limitations on referrals to restricted network providers and to other providers.
  6. A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.
  7. A description of the Medicare Select issuer's quality assurance program and grievance procedure.
- K. Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Section 24.J. and that the applicant understands the restrictions of the Medicare Select policy or certificate.
- L. A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the policyholders. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.
1. The grievance procedure shall be described in the policy and certificates and in the outline of coverage.
  2. At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.
  3. Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.
  4. If a grievance is found to be valid, corrective action shall be taken promptly.
  5. All concerned parties shall be notified about the results of a grievance.
  6. The issuer shall report to the Commissioner, no later than March 31 of each year, regarding its grievance procedure. The report shall be in a format prescribed by the Commissioner and shall contain the number of grievances filed in the past calendar year and a summary of the subject, nature and resolution of such grievances.
- M. At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.
- N. At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months.
- O. For the purposes of this section, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this subsection, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Medicare Part B excess charges.

- P. Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.
1. Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability.
  2. For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this subparagraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Medicare Part B excess charges.
- Q. A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies for the purpose of evaluating the Medicare Select Program.

## **Section 25      Incorporated Materials**

The “Flesch reading ease test and the National Association of Insurance Commissioners (NAIC) Life and Health Insurance Policy Language Simplification Act” shall mean the “Flesch reading ease test and the National Association of Insurance Commissioners (NAIC) Life and Health Insurance Policy Language Simplification Act” as published on the effective date of this regulation and does not include later amendments to or editions of the “Flesch reading ease test and the National Association of Insurance Commissioners (NAIC) Life and Health Insurance Policy Language Simplification Act”. A copy of the “Flesch reading ease test and the National Association of Insurance Commissioners (NAIC) Life and Health Insurance Policy Language Simplification Act” may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of the “Flesch reading ease test and the National Association of Insurance Commissioners (NAIC) Life and Health Insurance Policy Language Simplification Act” may be requested from the Colorado Division of Insurance for a fee. A charge for certification or copies may apply.

## **Section 26      Severability**

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

## **Section 27      Enforcement**

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

## **Section 28      Effective Date**

This amended regulation shall be effective December 1, 2018.

## **Section 29      History**

New Regulation 81-1 effective January 1, 1982.  
Regulation 81-1 repealed and replaced by 89-7.

Regulation 89-7 repealed and replaced by 90-4, effective January 1, 1991.  
Regulation 90-4 repealed and replaced by 91-18.  
Regulation 91-18 repealed and replaced by 4-3-1 effective May 1, 1992.  
Regulation 4-3-1 was amended effective April 1, 1996.  
Regulation 4-3-1 was amended effective September 1, 1996.  
Regulation 4-3-1 was amended effective April 1, 1999  
Regulation 4-3-1 was amended effective January 1, 2001.  
Regulation 4-3-1 was amended effective September 1, 2003.  
Sections 10(E)(2), 27 and 28 were amended effective December 1, 2003  
Regulation 4-3-1 was amended effective February 1, 2005.  
Regulation 4-3-1 was amended effective December 1, 2005.  
Regulation 4-3-1 was amended effective February 1, 2006.  
Emergency regulation 08-E-8 is effective January 1, 2009.  
Regulation 4-3-1 was amended effective February 1, 2009.  
Regulation 4-3-1 was amended effective June 1, 2009.  
Regulation 4-3-1 was amended effective January 1, 2010.  
Regulation 4-3-1 was amended effective December 1, 2018.

## APPENDIX A

### MEDICARE SUPPLEMENT REFUND CALCULATION FORM FOR

CALENDAR YEAR \_\_\_\_\_

TYPE <sup>1</sup>	_____	SMSBP <sup>2</sup>	_____
For the State of:	_____	Company Name:	_____
NAIC Group Code:	_____	NAIC Company Code:	_____
Address:	_____	Person Completing Exhibit:	_____
Title:	_____	Telephone Number:	_____

Line	(a) Earned Premium <sup>3</sup>	(b) Incurred Claims <sup>4</sup>
1.	Current Year's Experience	
	a. Total (all policy years)	
	b. Current year's issues <sup>5</sup>	
	c. Net (for reporting purposes = 1a-1b)	
2.	Past Years' Experience (all policy years)	
3.	Total Experience (Net Current Year + Past Year)	
4.	Refunds Last Year (Excluding Interest)	
5.	Previous Since Inception (Excluding Interest)	
6.	Refunds Since Inception (Excluding Interest)	
7.	Benchmark Ratio Since Inception (see worksheet for Ratio 1)	
8.	Experienced Ratio Since Inception (Ratio 2) Total Actual Incurred Claims (line 3, col. b) Total Earned Prem. (line 3, col. a)–Refunds Since Inception (line 6)	
9.	Life Years Exposed Since Inception If the Experienced Ratio is less than the Benchmark Ratio, and there are more than 500 life year's exposure, then proceed to calculation of refund.	
10.	Tolerance Permitted (obtained from credibility table)	
11.	Adjustment to Incurred Claims for Credibility	
	Ratio 3 = Ratio 2 + Tolerance	

If Ratio 3 is more than Benchmark Ratio (Ratio 1), a refund or credit to premium is not required.

If Ratio 3 is less than the Benchmark Ratio, then proceed.



- 1 Individual, Group, Individual Medicare Select, or Group Medicare Select Only.
- 2 "SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans.
- 3 Includes Modal Loadings and Fees Charged
- 4 Excludes Active Life Reserves
- 5 This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios"

APPENDIX A (continued)

MEDICARE SUPPLEMENT REFUND CALCULATION FORM FOR

CALENDAR YEAR \_\_\_\_\_

TYPE <sup>1</sup>	_____	SMSBP <sup>2</sup>	_____
For the State of:	_____	Company Name:	_____
NAIC Group Code:	_____	NAIC Company Code:	_____
Address:	_____	Person Completing Exhibit:	_____
Title:	_____	Telephone Number:	_____

Medicare Supplement Credibility Table

Life Years Exposed	
Since Inception	Tolerance
10,000+	0.0%
5,000 -9,999	5.0%
2,500 -4,999	7.5%
1,000 -2,499	10.0%
500 - 999	15.0%
If less than 500, no credibility.	

12.	Adjusted Incurred Claims [Total Earned Premiums (line 3, col. a)–Refunds Since Inception (line 6)] x Ratio 3 (line 11)	
13.	Refund = Total Earned Premiums (line 3, col. a)–Refunds Since Inception (line 6) – [Adjusted Incurred Claims (line 12) / Benchmark Ratio (Ratio 1)]	

If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund or credit against premiums to be used must be attached to this form.

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name - Please Type

\_\_\_\_\_  
Title - Please Type

Date

---

# REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR GROUP POLICIES

FOR CALENDAR YEAR \_\_\_\_\_

TYPE<sup>1</sup>

SMSBP<sup>2</sup>

For the State of: \_\_\_\_\_

Company Name: \_\_\_\_\_

NAIC Group Code: \_\_\_\_\_

NAIC Company Code: \_\_\_\_\_

Address: \_\_\_\_\_

Person Completing Exhibit: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

(a) <sup>3</sup>	(b) <sup>4</sup>	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o) <sup>5</sup>
Year	Earned Premium	Factor	(b) x (c)	Cumulative Loss Ratio	(d) x (e)	Factor	(b) x (g)	Cumulative Loss Ratio	(h) x (i)	Policy Loss Ratio
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.80
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
15+		4.175		0.567		8.684		0.838		0.89
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception:  $(l + n)/(k + m)$ : \_\_\_\_\_

1 Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

2 "SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans

3 Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

- 4 For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.
- 5 These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.
- 6 To include the earned premium for all years prior to as well as the 15<sup>th</sup> year prior to the current year.

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES  
FOR CALENDAR YEAR \_\_\_\_\_

TYPE <sup>1</sup>	SMSBP <sup>2</sup>	
For the State of:	Company Name:	
NAIC Group Code:	NAIC Company Code:	
Address:	Person Completing Exhibit:	
Title:	Telephone Number:	

(a) <sup>3</sup>	(b) <sup>4</sup>	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o) <sup>5</sup>
Year	Earned Premium	Factor	(b) x (c)	Cumulative Loss Ratio	(d) x (e)	Factor	(b) x (g)	Cumulative Loss Ratio	(h) x (i)	Policy Loss Ratio
1		2.770		0.442		0.000		0.000		0.40
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15+		4.175		0.493		8.684		0.725		0.77
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception:  $(l + n)/(k + m)$ : \_\_\_\_\_

1 Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

2 "SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans

3 Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

4 For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

5 These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

6 To include the earned premium for all years prior to as well as the 15<sup>th</sup> year prior to the current year.

## APPENDIX B

### Benefit Chart of Medicare Supplement Plans Sold for Effective Dates on or After June 1, 2010

This chart shows the benefits included in each of the standard Medicare supplement plans. Every issuer must make Plan “A” available. Some plans may not be available in your state. Plans E, H, I, and J are no longer available for sale.

In Colorado, it is a requirement that all plans offered by [Issuer] are available to under age 65 Medicare qualified individuals.

#### Basic Benefits:

- **Hospitalization** – Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.
- **Medical Expenses** – Part B coinsurance (generally 20% of Medicare-approved expenses) or copayments for hospital outpatient services. Plans K, L and N require insureds to pay a portion of Part B coinsurance or copayments.
- **Blood** – First three pints of blood each year.
- **Hospice** – Part A coinsurance.

A	B	C	D	F	F*	G	K	L	M	N
Basic, including 100% Part B coinsurance	Basic, including 100% Part B coinsurance	Basic, including 100% Part B coinsurance	Basic, including 100% Part B coinsurance	Basic, including 100% Part B coinsurance		Basic, including 100% Part B coinsurance	Hospitalization and preventive care paid at 100%; other basic benefits paid at 50%	Hospitalization and preventive care paid at 100%; other basic benefits paid at 75%	Basic, including 100% Part B coinsurance	Basic, including 100% Part B coinsurance, except up to \$20 copayment for office visit, and up to \$50 copayment for ER
		Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance		Skilled Nursing Facility Coinsurance	50% Skilled Nursing Facility Coinsurance	75% Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible		Part A Deductible	50% Part A Deductible	75% Part A Deductible	50% Part A Deductible	Part A Deductible
		Part B Deductible		Part B Deductible						
				Part B Excess (100%)		Part B Excess (100%)				
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency		Foreign Travel Emergency			Foreign Travel Emergency	Foreign Travel Emergency
							Out-of-pocket limit \$[5,240]; paid at 100% after limit reached	Out-of-pocket limit \$[2,620]; paid at 100% after limit reached		

\* Plan F also has an option called a high deductible plan F. This high deductible plan pays the same benefits as Plan F after one has paid a calendar year [\$2,240] deductible. Benefits from high deductible plan F will not begin until out-of-pocket expenses exceed [\$2,240]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but do not include the plan's separate foreign travel emergency deductible.



## APPENDIX B

### Benefit Chart of Medicare Supplement Plans Sold on or After January 1, 2020

This chart shows the benefits included in each of the standard Medicare supplement plans. Some plans may not be available. Only applicants first eligible for Medicare before 2020 may purchase Plans C, F, and high deductible F.

In Colorado, it is a requirement that all plans offered by [Issuer] are available to under age 65 Medicare qualified individuals.

Note: A ✓ means 100% of the benefit is paid.

	Plans Available to All Applicants								Medicare first eligible before 2020 only	
Benefits	A	B	D	G <sup>1</sup>	K	L	M	N	C	F <sup>1</sup>
Medicare Part A coinsurance and hospital coverage (up to an additional 365 days after Medicare benefits are used up)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Medicare Part B coinsurance or Copayment	✓	✓	✓	✓	50%	75%	✓	✓copays apply <sup>3</sup>	✓	✓
Blood (first three pints)	✓	✓	✓	✓	50%	75%	✓	✓	✓	✓
Part A hospice care coinsurance or copayment	✓	✓	✓	✓	50%	75%	✓	✓	✓	✓
Skilled nursing facility coinsurance			✓	✓	50%	75%	✓	✓	✓	✓
Medicare Part A deductible		✓	✓	✓	50%	75%	50%	✓	✓	✓
Medicare Part B deductible									✓	✓
Medicare Part B excess charges				✓						✓
Foreign travel emergency (up to plan limits)			✓	✓			✓	✓	✓	✓
Out-of-pocket limit in [2018]					[\$5,240] <sup>2</sup>	[\$2,620] <sup>2</sup>				

<sup>1</sup> Plans F and G also have a high deductible option which require first paying a plan deductible of [\$2,240] before the plan begins to pay. Once the plan deductible is met, the plan pays 100% of covered services for the rest of the calendar year. High deductible plan G does not cover the Medicare Part B deductible. However, high deductible plans F and G count your payment of the Medicare Part B deductible toward meeting the plan deductible.

<sup>2</sup> Plans K and L pay 100% of covered services for the rest of the calendar year once you meet the out-of-pocket yearly limit.

<sup>3</sup> Plan N pays 100% of the Part B coinsurance, except for a co-payment of up to \$20 for some office visits and up to a \$50 co-payment for emergency room visits that do not result in an inpatient admission.

### **PREMIUM INFORMATION [Boldface Type]**

We [insert issuer's name] can only raise your premium if we raise the premium for all policies like yours in this State. [If the premium is based on the increasing age of the insured, include information specifying when premiums will change.]

### **DISCLOSURES [Boldface Type]**

Use this outline to compare benefits and premiums among policies.

### **READ YOUR POLICY VERY CAREFULLY [Boldface Type]**

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

### **RIGHT TO RETURN POLICY [Boldface Type]**

If you find that you are not satisfied with your policy, you may return it to [insert issuer's address]. If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

### **POLICY REPLACEMENT [Boldface Type]**

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

### **NOTICE [Boldface Type]**

This policy may not fully cover all of your medical costs.

[For agents:]

Neither [insert issuer's name] nor its agents are connected with Medicare.

[For direct response:]

[Insert issuer's name] is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security Office or consult *Medicare and You* for more details.

**COMPLETE ANSWERS ARE VERY IMPORTANT** [Boldface Type]

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. No more than four plans may be shown on one chart. For purposes of illustration, charts for each plan are included in this regulation. An issuer may use additional benefit plan designations on these charts pursuant to Section 9.1.D. of this regulation.]

[Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the Commissioner.]

## PLAN A

### MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

\* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
• First 60 days	All but \$[1,340]	\$0	\$[1,340](Part A deductible)
• 61st thru 90th day	All but \$[335] a day	\$[335] a day	\$0
• 91st day and after: While using 60 lifetime reserve days	All but \$[670] a day	\$[670] a day	\$0
Once lifetime reserve days are used:			
• Additional 365 days	\$0	100% of Medicare- eligible expenses	\$0**
• Beyond the additional 365 days	\$0	\$0	All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare- approved facility Within 30 days after leaving the hospital			
• First 20 days	All approved amounts	\$0	\$0
• 21 <sup>st</sup> thru 100th day	All but \$[167.50] a day	\$0	Up to \$[167.50] a day
• 101st day and after	\$0	\$0	All costs
<b>BLOOD</b> • First 3 pints • Additional amounts	\$0 100%	3 pints \$0	\$0 \$0

<b>HOSPICE CARE</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness.	All but very limited copayment/coinsurance for out-patient drugs and inpatient respite care	Medicare copayment/coinsurance	\$0
---	---	--------------------------------	-----

**\*\* NOTICE:** When your Medicare Part A hospital benefits are exhausted, the issuer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits". During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

## PLAN A

### MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

\* Once you have been billed \$[183] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT</b> , such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment			
<ul style="list-style-type: none"> <li>First \$[183] of Medicare-Approved Amounts*</li> </ul>	\$0	\$0	\$[183] (Part B deductible)
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	Generally 80%	Generally 20%	\$0
<b>Part B Excess Charges</b> (Above Medicare-Approved Amounts)	\$0	\$0	All costs
<b>BLOOD</b> <ul style="list-style-type: none"> <li>First 3 pints</li> </ul>	\$0	All costs	\$0
<ul style="list-style-type: none"> <li>Next \$[183] of Medicare-Approved Amounts*</li> </ul>	\$0	\$0	\$[183] (Part B deductible)
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

**PLAN A**

**PARTS A & B**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOME HEALTH CARE</b> MEDICARE-APPROVED SERVICES Medically necessary skilled care services and medical supplies	100%	\$0	\$0
Durable medical equipment <ul style="list-style-type: none"><li>First \$[183] of Medicare-Approved Amounts*</li></ul>	\$0	\$0	\$[183] (Part B deductible)
<ul style="list-style-type: none"><li>Remainder of Medicare-Approved Amounts</li></ul>	80%	20%	\$0

## PLAN B

### MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

\* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
• First 60 days	All but \$[1,340]	\$[1,340](Part A deductible)	\$0
• 61 <sup>st</sup> thru 90th day	All but \$[335] a day	\$[335] a day	\$0
• 91 <sup>st</sup> day and after: While using 60 lifetime reserve days	All but \$[670] a day	\$[670] a day	\$0
Once lifetime reserve days are used:			
• Additional 365 days	\$0	100% of Medicare-eligible expenses	\$0**
• Beyond the additional 365 days	\$0	\$0	All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare- approved facility within 30 days after leaving the hospital			
• First 20 days	All approved amounts	\$0	\$0
• 21 <sup>st</sup> thru 100 <sup>th</sup> day	All but \$[167.50] a day	0	Up to \$[167.50] a day
• 101st day and after	\$0	\$0	All costs
<b>BLOOD</b> • First 3 pints • Additional amounts	\$0 100%	3 pints \$0	\$0 \$0



<b>HOSPICE CARE</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness	All but very limited copayment/coinsurance for out-patient drugs and inpatient respite care	Medicare copayment/coinsurance	\$0
--	---	--------------------------------	-----

**\*\* NOTICE:** When your Medicare Part A hospital benefits are exhausted, the issuer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits". During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

## PLAN B

### MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

\* Once you have been billed \$[183] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT</b> , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment			
<ul style="list-style-type: none"> <li>First \$[183] of Medicare-Approved Amounts*</li> </ul>	\$0	\$0	\$[183] (Part B deductible)
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	Generally 80%	Generally 20%	\$0
<b>Part B Excess Charges</b> (Above Medicare-Approved Amounts)	\$0	\$0	All costs
<b>BLOOD</b> <ul style="list-style-type: none"> <li>First 3 pints</li> </ul>	\$0	All costs	\$0
<ul style="list-style-type: none"> <li>Next \$[183] of Medicare-Approved Amounts*</li> </ul>	\$0	\$0	\$[183] (Part B deductible)
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

**PLAN B**

**PARTS A & B**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOME HEALTH CARE</b> MEDICARE-APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	\$0	\$0
Durable medical equipment <ul style="list-style-type: none"><li>First \$[183] of Medicare-Approved Amounts*</li></ul>	\$0	\$0	\$[183] (Part B deductible)
<ul style="list-style-type: none"><li>Remainder of Medicare-Approved Amounts</li></ul>	80%	20%	\$0

## PLAN C

### MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
• First 60 days	All but \$[1,340]	\$[1,340](Part A deductible)	\$0
• 61 <sup>st</sup> thru 90th day	All but \$[335] a day	\$[335] a day	\$0
• 91 <sup>st</sup> day and after: While using 60 lifetime reserve days	All but \$[670] a day	\$[670] a day	\$0
Once lifetime reserve days are used:			
• Additional 365 days	\$0	100% of Medicare-eligible expenses	\$0**
• Beyond the additional 365 days	\$0	\$0	All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare- approved facility within 30 days after leaving the hospital			
• First 20 days	All approved amounts	\$0	\$0
• 21 <sup>st</sup> thru 100 <sup>th</sup> day	All but \$[167.50] a day	Up to \$[167.50] a day	\$0
• 101st day and after	\$0	\$0	All costs
<b>BLOOD</b>			
• First 3 pints	\$0	3 pints	\$0
• Additional amounts	100%	\$0	\$0

<b>HOSPICE CARE</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness	All but very limited copayment/coinsurance for out-patient drugs and inpatient respite care	Medicare copayment/coinsurance	\$0
--	---	--------------------------------	-----

**\*\* NOTICE:** When your Medicare Part A hospital benefits are exhausted, the issuer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits". During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

## PLAN C

### MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

\*Once you have been billed \$[183] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT</b> , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment			
<ul style="list-style-type: none"> <li>First \$[183] of Medicare-Approved Amounts*</li> </ul>	\$0	\$[183] (Part B deductible)	\$0
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	Generally 80%	Generally 20%	\$0
<b>Part B Excess Charges</b> (Above Medicare-Approved Amounts)	\$0	\$0	All costs
<b>BLOOD</b> <ul style="list-style-type: none"> <li>First 3 pints</li> </ul>	\$0	All costs	\$0
<ul style="list-style-type: none"> <li>Next \$[183] of Medicare-Approved Amounts*</li> </ul>	\$0	\$[183] (Part B deductible)	\$0
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

**PLAN C**

<b>HOME HEALTH CARE</b> MEDICARE-APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	\$0	\$0
Durable medical equipment <ul style="list-style-type: none"> <li>First \$[183] of Medicare-Approved Amounts*</li> </ul>	\$0	\$[183](Part B deductible)	\$0
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	80%	20%	\$0

**PLAN C**

**OTHER BENEFITS—NOT COVERED BY MEDICARE**

<b>FOREIGN TRAVEL— NOT COVERED BY MEDICARE</b>  Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
<ul style="list-style-type: none"> <li>First \$250 each calendar year</li> </ul>	\$0	\$0	\$250
<ul style="list-style-type: none"> <li>Remainder of Charges</li> </ul>	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

## PLAN D

### MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

\* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
• First 60 days	All but \$[1,340]	\$[1,340] (Part A deductible)	\$0
• 61st thru 90th day	All but \$[335] a day	\$[335] a day	\$0
• 91st day and after: While using 60 lifetime reserve days	All but \$[670] a day	\$[670] a day \$0	\$0
Once lifetime reserve days are used:			
• Additional 365 days	\$0	100% of Medicare- eligible expenses	\$0
• Beyond the additional 365 days	\$0	\$0	All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare- approved facility within 30 days after leaving the hospital			
• First 20 days	All approved amounts	\$0	\$0
• 21 <sup>st</sup> thru 100th day	All but \$[167.50] a day	Up to \$[167.50] a day	\$0
• 101st day and after	\$0	\$0	All costs
<b>BLOOD</b> • First 3 pints • Additional amounts	\$0 100%	3 pints \$0	\$0 \$0



<b>HOSPICE CARE</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness	All but very limited copayment/coinsurance for out-patient drugs and inpatient respite care	Medicare copayment/coinsurance	\$0
--	---	--------------------------------	-----

**\*\* NOTICE:** When your Medicare Part A hospital benefits are exhausted, the issuer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits". During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

## PLAN D

### MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

\* Once you have been billed \$[183] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES—IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT</b> , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment			
<ul style="list-style-type: none"> <li>First \$[183] of Medicare-Approved Amounts*</li> </ul>	\$0	\$0	\$[183] (Part B deductible)
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	Generally 80%	Generally 20%	\$0
<b>Part B Excess Charges</b> (Above Medicare-Approved Amounts)	\$0	\$0	All costs
<b>BLOOD</b> <ul style="list-style-type: none"> <li>First 3 pints</li> </ul>	\$0	All costs	\$0
<ul style="list-style-type: none"> <li>Next \$[183] of Medicare-Approved Amounts*</li> </ul>	\$0	\$0	\$[183] (Part B deductible)
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

**PLAN D**

**PARTS A & B**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOME HEALTH CARE</b> MEDICARE-APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	\$0	\$0
Durable medical equipment First \$[183] of Medicare-Approved Amounts*	\$0	\$0	\$[183] (Part B deductible)
Remainder of Medicare-Approved Amounts	80%	20%	\$0

**PLAN D**

**OTHER BENEFITS—NOT COVERED BY MEDICARE**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>FOREIGN TRAVEL—NOT COVERED BY MEDICARE</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
<ul style="list-style-type: none"><li>First \$250 each calendar year</li></ul>	\$0	\$0	\$250
<ul style="list-style-type: none"><li>Remainder of charges</li></ul>	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

**PLAN F or HIGH DEDUCTIBLE PLAN F**

**MEDICARE (PART A) – HOSPITAL SERVICES – PER BENEFIT PERIOD**

\* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**[\*\*This high deductible plan pays the same benefits as Plan F after you have paid a calendar year [\$2,240] deductible. Benefits from the high deductible plan F will not begin until out-of-pocket expenses are [\$2,240]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan’s separate foreign travel emergency deductible.]**

		<div>[AFTER YOU</div> <div>P</div> <div>A</div> <div>Y</div> <div>\$</div> <div>[</div> <div>2</div> <div>,</div> <div>2</div> <div>4</div> <div>0</div> <div>]</div> <div>D</div> <div>E</div> <div>D</div> <div>U</div> <div>C</div> <div>T</div> <div>I</div> <div>B</div> <div>L</div> <div>E</div> <div>,</div> <div>*</div> <div>*</div> <div>]</div> <div>P</div> <div>L</div> <div>A</div> <div>N</div> <div>P</div> <div>A</div> <div>Y</div> <div>S</div>	
SERVICES	MEDICARE PAYS		<div>[IN ADDITION TO</div> <div>\$[2,240]</div> <div>DEDUCTIBLE,**]</div> <div>YOU PAY</div>

<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
•First 60 days	All but \$[1,340]	\$[1,340] (Part A deductible)	\$0
•61 <sup>st</sup> thru 90 <sup>th</sup> day	All but \$[335] a day	\$[335] a day	\$0
•91 <sup>st</sup> day and after: While using 60 Lifetime reserve days	All but \$[670] a day	\$[670] a day	\$0
Once lifetime reserve days are used:			
•Additional 365 days	\$0	100% of Medicare-eligible expenses	\$0***
•Beyond the additional 365 days	\$0	\$0	All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare- approved facility within 30 days after leaving the hospital			
•First 20 days	All approved amounts	\$0	\$0
•21 <sup>st</sup> thru 100 <sup>th</sup> day	All but \$[167.50] a day	Up to \$[167.50] a day	\$0
•101 <sup>st</sup> day and after	\$0	\$0	All costs
<b>BLOOD</b> •First 3 pints •Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
<b>HOSPICE CARE</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness.	All but very limited copayment/coinsuranc e for out-patient drugs and inpatient respite care	Medicare copayment/ coinsurance	\$0

**\*\*\* NOTICE:** When your Medicare Part A hospital benefits are exhausted, the issuer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits". During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

## PLAN F or HIGH DEDUCTIBLE PLAN F

### MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

\*Once you have been billed \$[183] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

**[\*\*This high deductible plan pays the same benefits as Plan F after you have paid a calendar year \$[2,240] deductible. Benefits from the high deductible Plan F will not begin until out-of-pocket expenses are \$[2,240]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.]**

SERVICES	MEDICARE PAYS	[AFTER YOU PAY \$ \$[2,240] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO \$ \$[2,240] DEDUCTIBLE,**]YOU PAY
<b>MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT</b> , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment			
<ul style="list-style-type: none"> <li>First \$[183] of Medicare-Approved Amounts*</li> </ul>	\$0	\$[183] (Part B deductible)	\$0
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	Generally 80%	Generally 20%	\$0
<b>Part B Excess Charges</b> (Above Medicare-Approved Amounts)	\$0	100%	\$0
<b>BLOOD</b> <ul style="list-style-type: none"> <li>First 3 pints</li> </ul>	\$0	All costs	\$0
<ul style="list-style-type: none"> <li>Next \$[183] of Medicare- Approved Amounts*</li> </ul>	\$0	\$[183] (Part B deductible)	\$0
<ul style="list-style-type: none"> <li>Remainder of Medicare- Approved Amounts</li> </ul>	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES— TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

**PLAN F or HIGH DEDUCTIBLE PLAN F**

**PARTS A & B**

<b>SERVICES</b>	<b>MEDICARE PAYS</b>	<b>AFTER YOU PAY \$[2,240] DEDUCTIBLE,** PLAN PAYS</b>	<b>IN ADDITION TO \$[2,240] DEDUCTIBLE,** YOU PAY</b>
<b>HOME HEALTH CARE</b> MEDICARE-APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	\$0	\$0
Durable medical equipment <ul style="list-style-type: none"> <li>First \$[183] of Medicare- approved Amounts*</li> </ul>	\$0	\$[183] (Part B deductible)	\$0
<ul style="list-style-type: none"> <li>Remainder of Medicare- Approved Amounts</li> </ul>	80%	20%	\$0

**PLAN F**

**OTHER BENEFITS - NOT COVERED BY MEDICARE**

<b>SERVICES</b>	<b>MEDICARE PAYS</b>	<b>AFTER YOU PAY \$[2,240] DEDUCTIBLE,** PLAN PAYS</b>	<b>IN ADDITION TO \$[2,240] DEDUCTIBLE,** YOU PAY</b>
<b>FOREIGN TRAVEL-- NOT COVERED BY MEDICARE</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
<ul style="list-style-type: none"> <li>First \$250 each calendar year</li> </ul>	\$0	\$0	\$250
<ul style="list-style-type: none"> <li>Remainder of charges</li> </ul>	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

## PLAN G

### MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
• First 60 days	All but \$[1,340]	\$[1,340] (Part A deductible)	\$0
• 61st thru 90th day	All but \$[335] a day	\$[335] a day	\$0
• 91st day and after: While using 60 lifetime reserve days	All but \$[670] a day	\$[670] a day	\$0
Once lifetime reserve days are used:			
• Additional 365 days	\$0	100% of Medicare-eligible expenses	\$0**
• Beyond the additional 365 days	\$0	\$0	All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
• First 20 days	All approved amounts	\$0	\$0
• 21 <sup>st</sup> thru 100th day	All but \$[167.50] a day	Up to \$[167.50] a day	\$0
• 101st day and after	\$0	\$0	All costs
<b>BLOOD</b>			
• First 3 pints	\$0	3 pints	\$0
• Additional amounts	100%	\$0	\$0



<b>HOSPICE CARE</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness	All but very limited copayment/coinsurance for out-patient drugs and inpatient respite care	Medicare copayment/coinsurance	\$0
--	---	--------------------------------	-----

**\*\* NOTICE:** When your Medicare Part A hospital benefits are exhausted, the issuer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits". During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

## PLAN G

### MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

\*Once you have been billed \$[183] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT</b> , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment			
<ul style="list-style-type: none"> <li>First \$[183] of Medicare-Approved Amounts*</li> </ul>	\$0	\$0	\$[183] (Part B deductible)
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	Generally 80%	Generally 20%	\$0
<b>Part B Excess Charges</b> (Above Medicare-Approved Amounts)	\$0	100%	\$0
<b>BLOOD</b> <ul style="list-style-type: none"> <li>First 3 pints</li> </ul>	\$0	All costs	\$0
<ul style="list-style-type: none"> <li>Next \$[183] of Medicare-Approved Amounts*</li> </ul>	\$0	\$0	\$[183] (Part B deductible)
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES—</b> TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

**PLAN G**

**PARTS A & B**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOME HEALTH CARE</b> MEDICARE-APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	\$0	\$0
Durable medical equipment First \$[183] of Medicare-Approved Amounts*	\$0	\$0	\$[183] (Part B deductible)
Remainder of Medicare-Approved Amounts	80%	20%	\$0

**PLAN G**

**OTHER BENEFITS—NOT COVERED BY MEDICARE**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>FOREIGN TRAVEL-- NOT COVERED BY MEDICARE</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
• First \$250 each calendar year	\$0	\$0	\$250
• Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

**PLAN G OR HIGH DEDUCTIBLE PLAN G EFFECTIVE JANUARY 1, 2020**

**MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD**

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

[\*\*This high deductible plan pays the same benefits as Plan G after you have paid a calendar year [\$2,240] deductible. Benefits from the high deductible plan G will not begin until out-of-pocket expenses are [\$2,240]. Out-of-pocket expenses for this deductible include expenses for the Medicare Part B deductible, and expenses that would ordinarily be paid by the policy. This does not include the plan's separate foreign travel emergency deductible.]

SERVICES	MEDICARE PAYS	[AFTER YOU PAY \$[2,240] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO \$[2,240] DEDUCTIBLE,**] YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
• First 60 days	All but \$[1,340]	\$[1,340] (Part A deductible)	\$0
• 61st thru 90th day	All but \$[335] a day	\$[335] a day	\$0
• 91st day and after: While using 60 lifetime reserve days	All but \$[670] a day	\$[670] a day	\$0
Once lifetime reserve days are used:			
• Additional 365 days	\$0	100% of Medicare- eligible expenses	\$0***
• Beyond the additional 365 days	\$0	\$0	All costs

<b>SKILLED NURSING FACILITY CARE*</b>  You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
<ul style="list-style-type: none"> <li>First 20 days</li> </ul>	All approved amounts	\$0	\$0
<ul style="list-style-type: none"> <li>21<sup>st</sup> thru 100th day</li> </ul>	All but \$[167.50] a day	Up to \$[167.50] a day	\$0
<ul style="list-style-type: none"> <li>101st day and after</li> </ul>	\$0	\$0	All costs
<b>BLOOD</b> <ul style="list-style-type: none"> <li>First 3 pints</li> <li>Additional amounts</li> </ul>	\$0 100%	3 pints \$0	\$0 \$0
<b>HOSPICE CARE</b>  You must meet Medicare's requirements, including a doctor's certification of terminal illness	All but very limited copayment/ coinsurance for out-patient drugs and inpatient respite care	Medicare copayment/ coinsurance	\$0

**\*\* NOTICE:** When your Medicare Part A hospital benefits are exhausted, the issuer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits". During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**PLAN G OR HIGH DEDUCTIBLE PLAN G EFFECTIVE JANUARY 1, 2020**

**MEDICARE (PART B) —MEDICAL SERVICES—PER CALENDAR YEAR**

\*Once you have been billed \$[183] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

[\*\*This high deductible plan pays the same benefits as Plan G after you have paid a calendar year \$[2,240] deductible. Benefits from the high deductible plan G will not begin until out-of-pocket expenses are \$[2,240]. Out-of-pocket expenses for this deductible include expenses for the Medicare Part B deductible, and expenses that would ordinarily be paid by the policy. This does not include the plan's separate foreign travel emergency deductible.]

SERVICES	MEDICARE PAYS	[AFTER YOU PAY \$[2,240] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO \$[2,240] DEDUCTIBLE,**] YOU PAY
<b>MEDICAL EXPENSES-- IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT</b> , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
<ul style="list-style-type: none"> <li>First \$[183] of Medicare-Approved Amounts*</li> </ul>	\$0	\$0	\$[183] (Unless Part B deductible has been met)
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	Generally 80%	Generally 20%	\$0
<b>Part B Excess Charges</b> (Above Medicare-Approved Amounts)	\$0	100%	\$0
<b>BLOOD</b> <ul style="list-style-type: none"> <li>First 3 pints</li> </ul>	\$0	All costs	\$0
<ul style="list-style-type: none"> <li>Next \$[183] of Medicare-Approved Amounts*</li> </ul>	\$0	\$0	\$[183] (Unless Part B deductible has been met)
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	80%	20%	\$0

<b>CLINICAL LABORATORY SERVICES</b> —TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0
--	------	-----	-----

**PLAN G OR HIGH DEDUCTIBLE PLAN G EFFECTIVE JANUARY 1, 2020**

**PARTS A & B**

<b>SERVICES</b>	<b>MEDICARE PAYS</b>	<b>[AFTER YOU PAY \$[2,240] DEDUCTIBLE,**] PLAN PAYS</b>	<b>[IN ADDITION TO \$[2,240] DEDUCTIBLE,]** YOU PAY</b>
<b>HOME HEALTH CARE</b> MEDICARE-APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	\$0	\$0
Durable medical equipment First \$[183] of Medicare- Approved Amounts*	\$0	\$0	\$[183] (Unless Part B deductible has been met)
Remainder of Medicare- Approved Amounts	80%	20%	\$0

**PLAN G or HIGH DEDUCTIBLE PLAN G OTHER**

**OTHER BENEFITS—NOT COVERED BY MEDICARE**

<b>SERVICES</b>	<b>MEDICARE PAYS</b>	<b>[AFTER YOU PAY \$[2,240] DEDUCTIBLE,**] PLAN PAYS</b>	<b>[IN ADDITION TO \$[2,240] DEDUCTIBLE,]** YOU PAY</b>
<b>FOREIGN TRAVEL— NOT COVERED BY MEDICARE</b>  Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
<ul style="list-style-type: none"> <li>First \$250 each calendar year</li> </ul>	\$0	\$0	\$250



<ul style="list-style-type: none"><li>• Remainder of Charges</li></ul>	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum
--	-----	---	--

## PLAN K

\* You will pay half the cost-sharing of some covered services until you reach the annual out-of-pocket limit of \$[5,240] each calendar year. The amounts that count toward your annual limit are noted with diamonds (♦) in the chart below. Once you reach the annual limit, the plan pays 100% of your Medicare copayment and coinsurance for the rest of the calendar year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called “Excess Charges”) and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

### MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

\*\* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
<b>HOSPITALIZATION**</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
• First 60 days	All but \$[1,340]	\$[670](50% of Part A deductible)	\$[670](50% of Part A deductible) ♦
• 61 <sup>st</sup> thru 90 <sup>th</sup> day	All but \$[335] a day	\$[335] a day	\$0
• 91 <sup>st</sup> day and after: While using 60 lifetime reserve days	All but \$[670] a day	\$[670] a day	\$0
Once lifetime reserve days are used:			
• Additional 365 days	\$0	100% of Medicare-eligible expenses	\$0***
• Beyond the additional 365 days	\$0	\$0	All costs
<b>SKILLED NURSING FACILITY CARE**</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
• First 20 days	All approved amounts	\$0	\$0
• 21 <sup>st</sup> thru 100 <sup>th</sup> day	All but \$[167.50] a day	Up to \$[83.75] a day	Up to \$[83.75] a day ♦
• 101 <sup>st</sup> day and after	\$0	\$0	All costs

<b>BLOOD</b> <ul style="list-style-type: none"> <li>• First 3 pints</li> <li>• Additional amounts</li> </ul>	0 100%	50% \$0	50% ♦ \$0
<b>HOSPICE CARE</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness.	All but very limited copayment/coinsurance for outpatient drugs and inpatient respite care	50% of copayment/coinsurance	50% of Medicare copayment/coinsurance ♦

**\*\*\* NOTICE:** When your Medicare Part A hospital benefits are exhausted, the issuer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits". During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

## PLAN K

### MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

\*\*\*\* Once you have been billed \$[183] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
<b>MEDICAL EXPENSES--IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT</b> , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment			
<ul style="list-style-type: none"> <li>First \$[183] of Medicare-Approved Amounts****</li> </ul>	\$0	\$0	\$[183] (Part B deductible)**** ♦
<ul style="list-style-type: none"> <li>Preventive Benefits for Medicare covered services</li> </ul>	Generally 80% or more of Medicare-approved amounts	Remainder of Medicare-approved amounts	All costs above Medicare-approved amounts
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	Generally 80%	Generally 10%	Generally 10% ♦
<b>Part B Excess Charges</b> (Above Medicare-Approved Amounts)	\$0	\$0	All costs (and they do not count toward annual out-of-pocket limit of [\$5,240])*
<b>BLOOD</b>			
<ul style="list-style-type: none"> <li>First 3 pints</li> </ul>	\$0	50%	50% ♦
<ul style="list-style-type: none"> <li>Next \$[183] of Medicare-Approved Amounts****</li> </ul>	\$0	\$0	\$[183] (Part B deductible)**** ♦
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	Generally 80%	Generally 10%	Generally 10% ♦
<b>CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

\* **This plan limits your annual out-of-pocket payments for Medicare-approved amounts to \$[5,240] per year.** However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.

**PLAN K**  
**PARTS A & B**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
<b>HOME HEALTH CARE</b> MEDICARE-APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	\$0	\$0
Durable medical equipment <ul style="list-style-type: none"> <li>First \$[183] of Medicare-Approved Amounts*****</li> </ul>	\$0	\$0	\$[183] (Part B deductible) ♦
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	80%	10%	10% ♦

\*\*\*\*\*Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare*.

## PLAN L

\* You will pay one-fourth of the cost-sharing of some covered services until you reach the annual out-of-pocket limit of \$[2,620] each calendar year. The amounts that count toward your annual limit are noted with diamonds (♦) in the chart below. Once you reach the annual limit, the plan pays 100% of your Medicare copayment and coinsurance for the rest of the calendar year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called “Excess Charges”) and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

### MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

\*\* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
<b>HOSPITALIZATION**</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
• First 60 days	All but \$[1,340]	\$[1,005] (75% of Part A deductible)	\$[335] (25% of Part A deductible) ♦
• 61st thru 90th day	All but \$[335] a day	\$[335] a day	\$0
• 91st day and after: While using 60 lifetime reserve days	All but \$[670] a day	\$[670] a day	\$0
Once lifetime reserve days are used:			
• Additional 365 days	\$0	100% of Medicare- eligible expenses	\$0***
• Beyond the additional 365 days	\$0	\$0	All costs
<b>SKILLED NURSING FACILITY CARE**</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare- approved facility within 30 days after leaving the hospital			
• First 20 days	All approved amounts	\$0	\$0
• 21 <sup>st</sup> thru 100th day	All but \$[167.50] a day	Up to \$[125.63] a day	Up to \$[41.88] a day ♦
• 101st day and after	\$0	\$0	All costs

<b>BLOOD</b> <ul style="list-style-type: none"> <li>• First 3 pints</li> <li>• Additional amounts</li> </ul>	\$0 100%	75% \$0	25% ♦ \$0
<b>HOSPICE CARE</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness.	All but very limited copayment/coinsurance for outpatient drugs and inpatient respite care	75% of copayment/coinsurance	25% of copayment/coinsurance ♦

\*\*\*Notice: When your Medicare Part A hospital benefits are exhausted, the issuer stands in the place of Medicare and shall pay whatever amount Medicare would have paid for up to an additional 365 as provided in the policy's "Core Benefits". During this time the hospital is prohibited from billing you for the balance based on any difference between it's billed charges and the amount Medicare would have paid.

## PLAN L

### MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

\* Once you have been billed (\$183) of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
<b>MEDICARE EXPENSES—IN OR OUT OF THE HOSPITAL TREATMENT</b> , such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment.			
First \$[183] of Medicare-Approved Amounts****	\$0	\$0	\$[183] (Part B deductible)****♦
Preventive Benefits for Medicare covered services	Generally 80% or more of Medicare-approved amounts	Remainder of Medicare-approved amounts	All costs above Medicare-approved amounts
Remainder of Medicare-Approved Amounts	Generally 80%	Generally 15%	Generally 5% ♦
<b>Part B Excess Charges</b> (Above Medicare-Approved Amounts)	\$0	\$0	All costs (and they do not count toward annual out-of-pocket limit of [\$2,620])*
<b>BLOOD</b>			
• First 3 pints	\$0	75%	25% ♦
• Next \$[183] of Medicare-Approved Amounts****	\$0	\$0	\$[183] (Part B deductible) ♦
• Remainder of Medicare-Approved Amounts	Generally 80%	Generally 15%	Generally 5%♦
<b>CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

\* **This plan limits your annual out-of-pocket payments for Medicare-approved amounts to \$[2,620] per year.** However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this



difference in the amount charged by your provider and the amount paid by Medicare for the item or service.

**PLAN L**

**PARTS A & B**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
<b>HOME HEALTH CARE</b> MEDICARE-APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	\$0	\$0
Durable medical equipment <ul style="list-style-type: none"> <li>First \$[183] of Medicare-Approved Amounts*****</li> </ul>	\$0	\$0	\$[183] (Part B deductible) ♦
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	80%	15%	5% ♦

\*\*\*\*\*Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare*.

## PLAN M

### MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

\* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for sixty (60) days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
• First 60 days	All but \$[1,340]	\$670](50% of Part A deductible)	\$[670](50% of Part A deductible)
• 61 <sup>st</sup> thru 90th day	All but \$[335] a day	\$[335] a day	\$0
• 91 <sup>st</sup> day and after: • While using 60 lifetime reserve days	All but \$[670] a day	\$[670] a day	\$0
Once lifetime reserve days are used: • Additional 365 days	\$0	100% of Medicare- eligible expenses	\$0**
• Beyond the additional 365 days	\$0	\$0	All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare- approved facility within 30 days after leaving the hospital			
• First 20 days	All approved amounts	\$0	\$0
• 21 <sup>st</sup> thru 100th day	All but \$[167.50] a day	Up to \$[167.50] a day	\$0
• 101st day and after	\$0	\$0	All costs
<b>BLOOD</b> • First 3 pints • Additional amounts	\$0 100%	3 pints \$0	\$0 \$0

<b>HOSPICE CARE</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness	All but very limited copayment/coinsurance for outpatient drugs and inpatient respite care	Medicare copayment/coinsurance	\$0
--	--	--------------------------------	-----

**\*\* NOTICE:** When your Medicare Part A hospital benefits are exhausted, the issuer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional three hundred and sixty five (365) days as provided in the policy's "Core Benefits". During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

## PLAN M

### MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

\* Once you have been billed \$[183] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES—</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment			
<ul style="list-style-type: none"> <li>First \$[183] of Medicare-Approved Amounts*</li> </ul>	\$0	\$0	\$[183] (Part B deductible)
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	Generally 80%	Generally 20%	\$0
<b>Part B Excess Charges</b> (Above Medicare-Approved Amounts)	\$0	\$0	All costs
<b>BLOOD</b> <ul style="list-style-type: none"> <li>First 3 pints</li> </ul>	\$0	All costs	\$0
<ul style="list-style-type: none"> <li>Next \$[183] of Medicare-Approved Amounts*</li> </ul>	\$0	\$0	\$[183] (Part B deductible)
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

**PLAN M**

**PARTS A & B**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
<b>HOME HEALTH CARE</b> MEDICARE-APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	\$0	\$0
Durable medical equipment First \$[183] of Medicare-Approved Amounts*	\$0	\$0	\$[183] (Part B deductible)
Remainder of Medicare-Approved Amounts	80%	20%	\$0

**PLAN M**

**OTHER BENEFITS—NOT COVERED BY MEDICARE**

<b>FOREIGN TRAVEL— NOT COVERED BY MEDICARE</b>  Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
<ul style="list-style-type: none"> <li>First \$250 each calendar year</li> </ul>	\$0	\$0	\$250
<ul style="list-style-type: none"> <li>Remainder of Charges</li> </ul>	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

## PLAN N

### MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

\* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
• First 60 days	All but \$[1,340]	\$[1,340](Part A deductible)	\$0
• 61 <sup>st</sup> thru 90th day	All but \$[335] a day	\$[335] a day	\$0
• 91 <sup>st</sup> day and after: While using 60 lifetime reserve days	All but \$[670] a day	\$[670] a day	\$0
Once lifetime reserve days are used:			
• Additional 365 days	\$0	100% of Medicare- eligible expenses	\$0**
• Beyond the additional 365 days	\$0	\$0	All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare- approved facility within 30 days after leaving the hospital			
• First 20 days	All approved amounts	\$0	\$0
• 21 <sup>st</sup> thru 100th day	All but \$[167.50] a day	Up to \$[167.50] a day	\$0
• 101st day and after	\$0	\$0	All costs
<b>BLOOD</b> • First 3 pints • Additional amounts	\$0 100%	3 pints \$0	\$0 \$0

<b>HOSPICE CARE</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness	All but very limited copayment/coinsurance for outpatient drugs and inpatient respite care	Medicare copayment/coinsurance	\$0
--	--	--------------------------------	-----

**\*\* NOTICE:** When your Medicare Part A hospital benefits are exhausted, the issuer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits". During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.



**PLAN N**

**MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR**

\* Once you have been billed \$[183] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES—</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment			
<ul style="list-style-type: none"> <li>First \$[183] of Medicare-Approved Amounts*</li> </ul>	\$0	\$0	\$[183] (Part B deductible)
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	Generally 80%	Balance, other than up to [\$20] per office visit and up to [\$50] per emergency room visit. The copayment of up to [\$50] is waived if the insured is admitted to any hospital and the emergency visit is covered as a Medicare Part A expense.	Up to [\$20] per office visit and up to [\$50] per emergency room visit. The copayment of up to [\$50] is waived if the insured is admitted to any hospital and the emergency visit is covered as a Medicare Part A expense.
<b>Part B Excess Charges</b> (Above Medicare-Approved Amounts)	\$0	\$0	All costs
<b>BLOOD</b> <ul style="list-style-type: none"> <li>First 3 pints</li> </ul>	\$0	All costs	\$0
<ul style="list-style-type: none"> <li>Next \$[183] of Medicare-Approved Amounts*</li> </ul>	\$0	\$0	\$[183] (Part B deductible)
<ul style="list-style-type: none"> <li>Remainder of Medicare-Approved Amounts</li> </ul>	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

**PLAN N**

**PARTS A & B**

<b>HOME HEALTH CARE</b> MEDICARE-APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	\$0	\$0
Durable medical equipment First \$[183] of Medicare- Approved Amounts*	\$0	\$0	\$[183] (Part B deductible)
Remainder of Medicare- Approved Amounts	80%	20%	\$0

**PLAN N**

**OTHER BENEFITS—NOT COVERED BY MEDICARE**

<b>FOREIGN TRAVEL— NOT COVERED BY MEDICARE</b>			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
<ul style="list-style-type: none"> <li>First \$250 each calendar year</li> </ul>	\$0	\$0	\$250
<ul style="list-style-type: none"> <li>Remainder of Charges</li> </ul>	\$0	80% to a lifetime maxi- mum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

## APPENDIX C

### NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE OR MEDICARE ADVANTAGE

[Issuer's name and address]

#### SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to terminate existing Medicare supplement or Medicare Advantage insurance and replace it with a policy to be issued by [Issuer Name]. Your new policy will provide thirty (30) days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement or Medicare Advantage coverage is a wise decision, you should terminate your present Medicare supplement or Medicare Advantage coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

#### STATEMENT TO APPLICANT BY ISSUER, AGENT [BROKER OR OTHER REPRESENTATIVE]:

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement or, if applicable, Medicare Advantage coverage because you intend to terminate your existing Medicare supplement coverage or leave your Medicare Advantage plan. The replacement policy is being purchased for the following reason (check one):

- ☐ Additional benefits.
- ☐ No change in benefits, but lower premiums.
- ☐ Fewer benefits and lower premiums.
- ☐ My plan has outpatient prescription drug coverage and I am enrolling in Medicare Part D.
- ☐ Disenrollment from a Medicare Advantage plan. Please explain reason for disenrollment.  
[Optional only for Direct Mailers.]  
\_\_\_\_\_  
\_\_\_\_\_
- ☐ Other. (please specify) \_\_\_\_\_

1. Note: If the issuer of the Medicare supplement policy being applied for does not, or is otherwise prohibited from imposing preexisting condition limitations, please skip to statement 2 below. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or

probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the issuer to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

---

(Signature of Agent, Broker or Other Representative)\*

[Typed Name and Address of issuer, Agent or Broker]

---

(Applicant's Signature)

---

(Date)

\*Signature not required for direct response sales.

**APPENDIX D**

**FORM FOR REPORTING  
MEDICARE SUPPLEMENT POLICIES**

Issuer Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Due March 1, annually

The purpose of this form is to report the following information on each resident of this state who has in force more than one Medicare supplement policy or certificate. The information is to be grouped by individual policyholder.

Policy and Certificate Number	Date of Issuance

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title (please type)

\_\_\_\_\_  
Date

## APPENDIX E

### DISCLOSURE STATEMENTS

Instructions for Use of the Disclosure Statements for Health Insurance Policies Sold to Medicare Beneficiaries that Duplicate Medicare

1. Section 1882(d) of the federal Social Security Act [42 U.S.C. Section 1395ss] prohibits the sale of a health insurance policy (the term policy includes certificate) to Medicare beneficiaries that duplicates Medicare benefits unless it will pay benefits without regard to a beneficiary's other health coverage and it includes the prescribed disclosure statement on or together with the application for the policy.
2. All types of health insurance policies that duplicate Medicare shall include one of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement may not vary from the attached statements in terms of language or format (type size, type proportional spacing, bold character, line spacing, and usage of boxes around text).
3. State and federal law prohibits issuers from selling a Medicare supplement policy to a person that already has a Medicare supplement policy except as a replacement policy.
4. Property/casualty and life insurance policies are not considered health insurance.
5. Disability income policies are not considered to provide benefits that duplicate Medicare.
6. Long-term care insurance policies that coordinate with Medicare and other health insurance are not considered to provide benefits that duplicate Medicare.
7. The federal law does not preempt state laws that are more stringent than the federal requirements.
8. The federal law does not preempt existing state form filing requirements.
9. Section 1882 of the federal Social Security Act was amended in Subsection (d)(3)(A) to allow for alternative disclosure statements. The disclosure statements already in Appendix E remain. Carriers may use either disclosure statement with the requisite insurance product. However, carriers should use either the original disclosure statements or the alternative disclosure statements and not use both simultaneously.

[Original disclosure statement for policies that provide benefits for expenses incurred for an accidental injury only.]

<p><b>IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS</b></p>
--

**This is not Medicare Supplement Insurance**

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when it pays:**

- Hospital or medical expenses up to the maximum stated in the policy

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- Hospitalization
- Physician services
- Outpatient prescription drugs if you are enrolled in Medicare Part D
- Other approved items and services

<p><b>Before You Buy This Insurance</b></p>
---

- ✓ Check the coverage in **all** health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state health insurance assistance program (SHIP).

[Original disclosure statement for policies that provide benefits for specified limited services.]

## **IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

### **This is not Medicare Supplement Insurance**

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

### **This insurance duplicates Medicare benefits when:**

- Any of the services covered by the policy are also covered by Medicare

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- Hospitalization
- Physician services
- Outpatient prescription drugs if you are enrolled in Medicare Part D
- Other approved items and services

### **Before You Buy This Insurance**

- ✓ Check the coverage in **all** health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state health insurance assistance program (SHIP).



[Original disclosure statement for policies that reimburse expenses incurred for specified diseases or other specified impairments. This includes expense-incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

## **IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

### **This is not Medicare Supplement Insurance**

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

### **This insurance duplicates Medicare benefits when it pays:**

- Hospital or medical expenses up to the maximum stated in the policy

### **Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- Hospitalization
- Physician services
- Hospice
- Outpatient prescription drugs if you are enrolled in Medicare Part D
- Other approved items and services

### **Before You Buy This Insurance**

- ✓ Check the coverage in **all** health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state health insurance assistance program (SHIP).

[Original disclosure statement for policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

<p><b>IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS</b></p>
--

**This is not Medicare Supplement Insurance**

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits because Medicare generally pays for most of the expenses for the diagnosis and treatment of the specific conditions or diagnoses named in the policy.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- Hospitalization
- Physician services
- Hospice
- Outpatient prescription drugs if you are enrolled in Medicare Part D
- Other approved items and services

<p><b>Before You Buy This Insurance</b></p>
---

- ✓ Check the coverage in **all** health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state health insurance assistance program (SHIP).

[Original disclosure statement for indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.]

<p><b>IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS</b></p>
--

**This is not Medicare Supplement Insurance**

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when:**

- Any expenses or services covered by the policy are also covered by Medicare

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- Hospitalization
- Physician services
- Hospice
- Outpatient prescription drugs if you are enrolled in Medicare Part D
- Other approved items and services

<p><b>Before You Buy This Insurance</b></p>
---

- ✓ Check the coverage in **all** health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state health insurance assistance program (SHIP).

[Original disclosure statement for policies that provide benefits upon both an expense-incurred and fixed indemnity basis.]

## **IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

### **This is not Medicare Supplement Insurance**

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

### **This insurance duplicates Medicare benefits when:**

- Any expenses or services covered by the policy are also covered by Medicare; or
- It pays the fixed dollar amount stated in the policy and Medicare covers the same event

### **Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- Hospitalization
- Physician services
- Hospice care
- Outpatient prescription drugs if you are enrolled in Medicare Part D
- Other approved items and services

### **Before You Buy This Insurance**

- ✓ Check the coverage in **all** health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state health insurance assistance program (SHIP).

[Original disclosure statement for other health insurance policies not specifically identified in the preceding statements.]

<p><b>IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS</b></p>
--

**This is not Medicare Supplement Insurance**

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when it pays:**

- The benefits stated in the policy and coverage for the same event is provided by Medicare

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- Hospitalization
- Physician services
- Hospice
- Outpatient prescription drugs if you are enrolled in Medicare Part D
- Other approved items and services

<p><b>Before You Buy This Insurance</b></p>
---

- ✓ Check the coverage in **all** health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state health insurance assistance program (SHIP).

[Alternative disclosure statement for policies that provide benefits for expenses incurred for an accidental injury only.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS IS NOT  
MEDICARE SUPPLEMENT INSURANCE  
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

**Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.**

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- Hospitalization
- Physician services
- Outpatient prescription drugs if you are enrolled in Medicare Part D
- Other approved items and services

**This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.**

**Before You Buy This Insurance**

- ✓ Check the coverage in **all** health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state health insurance assistance program (SHIP).

[Alternative disclosure statement for policies that provide benefits for specified limited services.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS IS NOT  
MEDICARE SUPPLEMENT INSURANCE  
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

**Some health care services paid for by Medicare may also trigger the payment of benefits under this policy.**

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- Hospitalization
- Physician services
- Outpatient prescription drugs if you are enrolled in Medicare Part D
- Other approved items and services

**This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.**

**Before You Buy This Insurance**

- ✓ Check the coverage in **all** health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state health insurance assistance program (SHIP).

[Alternative disclosure statement for policies that reimburse expenses incurred for specified diseases or other specified impairments. This includes expense-incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS IS NOT  
MEDICARE SUPPLEMENT INSURANCE  
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

**Some health care services paid for by Medicare may also trigger the payment of benefits from this policy. Medicare generally pays for most or all of these expenses.**

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- Hospitalization
- Physician services
- Hospice
- Outpatient prescription drugs if you are enrolled in Medicare Part D
- Other approved items and services

**This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.**

**Before You Buy This Insurance**

- ✓ Check the coverage in **all** health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state health insurance assistance program (SHIP).



[Alternative disclosure statement for policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS IS NOT  
MEDICARE SUPPLEMENT INSURANCE  
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

**Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.**

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- Hospitalization
- Physician services
- Hospice
- Outpatient prescription drugs if you are enrolled in Medicare Part D
- Other approved items and services

**This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.**

**Before You Buy This Insurance**

- ✓ Check the coverage in **all** health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state health insurance assistance program (SHIP).

[Alternative disclosure statement for indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS IS NOT  
MEDICARE SUPPLEMENT INSURANCE  
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

**Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.**

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- Hospitalization
- Physician services
- Hospice
- Outpatient prescription drugs if you are enrolled in Medicare Part D
- Other approved items and services

**This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.**

**Before You Buy This Insurance**

- ✓ Check the coverage in **all** health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state health insurance assistance program (SHIP).

[Alternative disclosure statement for policies that provide benefits upon both an expense-incurred and fixed indemnity basis.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS IS NOT  
MEDICARE SUPPLEMENT INSURANCE  
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

**Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.**

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- Hospitalization
- Physician services
- Hospice care
- Outpatient prescription drugs if you are enrolled in Medicare Part D
- Other approved items and services

**This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.**

**Before You Buy This Insurance**

- ✓ Check the coverage in **all** health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state health insurance assistance program (SHIP).

[Alternative disclosure statement for other health insurance policies not specifically identified in the preceding statements.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS IS NOT  
MEDICARE SUPPLEMENT INSURANCE  
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

**Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.**

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- Hospitalization
- Physician services
- Hospice
- Outpatient prescription drugs if you are enrolled in Medicare Part D
- Other approved items and services

**This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.**

**Before You Buy This Insurance**

- ✓ Check the coverage in **all** health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state health insurance assistance program (SHIP).

**CYNTHIA H. COFFMAN**  
Attorney General  
**MELANIE J. SNYDER**  
Chief Deputy Attorney General  
**LEORA JOSEPH**  
Chief of Staff  
**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000  
  
**Office of the Attorney General**

Tracking number: 2018-00351

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

Division of Insurance

**on 10/17/2018**

3 CCR 702-4 Series 4-3

LIFE, ACCIDENT AND HEALTH, Series 4-3 Medicare

The above-referenced rules were submitted to this office on 10/17/2018 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 23, 2018 09:40:43

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General

## **Permanent Rules Adopted**

**Department**

Department of Public Health and Environment

**Agency**

Air Quality Control Commission

**CCR number**

5 CCR 1001-5

**Rule title**

5 CCR 1001-5 REGULATION NUMBER 3 STATIONARY SOURCE PERMITTING  
AND AIR POLLUTANT EMISSION NOTICE REQUIREMENTS 1 - eff 11/30/2018

**Effective date**

11/30/2018

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**Air Quality Control Commission**

**REGULATION NUMBER 3**

**Stationary Source Permitting and Air Pollutant Emission Notice Requirements**

**5 CCR 1001-5**

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

---

**Outline of Regulation**

PART A	Concerning General Provisions Applicable to Reporting and Permitting
PART B	Concerning Construction Permits
PART C	Concerning Operating Permits
PART D	Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration
PART E	Reserved for Environmental Management Systems
PART F	Regional Haze Limits - Best Available Retrofit Technology (BART) and Reasonable Progress (RP)
PART G	Statements of Basis, Specific Statutory Authority and Purpose

---

**PART A        CONCERNING GENERAL PROVISIONS APPLICABLE TO REPORTING AND PERMITTING**

>>>>>>>

**VI.        Fees**

**VI.A.    General**

VI.A.1. Every person required to obtain a Construction or Operating Permit or to file an Air Pollution Emission Notice shall pay fees as set forth in the following sections. Such fees shall be charged to recover the direct and indirect costs incurred by the Division in processing permit applications, issuing permits, and in conducting a compliance monitoring and enforcement program. Such fees shall apply without regard to whether a permit is issued, denied, withdrawn, or revoked. Fees shall be charged as indicated in Section VI.D. of this part.

**VI.B.    Permit Processing Fees**

VI.B.1. Applicants for a permit shall be assessed total fees that shall be partially determined at the time that the Division makes its decision whether to issue preliminary approval of the

permit and partially at the time the Division makes its decision whether to issue final approval.

VI.B.2. The partial fee collected at the time the Division makes its decision whether to issue preliminary approval of the permit shall include the costs associated with the preliminary engineering evaluation, modeling, and analysis of impact on ambient air quality, notice and publication requirements, and such other costs as are required for the aforementioned activities incurred by the Division up to the time of the decision of whether to issue preliminary approval.

VI.B.3. The final fee collected at the time the Division makes its decision of whether to issue final approval shall include the balance of the total of all costs associated with enforcement of any terms and conditions of the emission permit, the supervision of compliance testing, notice and publication requirements, and such other costs as are required for the processing, issuance, and administration of the permit.

VI.B.4. If the Division requires more than thirty hours to process an application, the Division shall inform the owner or operator of the source and provide an estimate of what the actual charges may be, prior to commencing with processing of the application, unless the owner or operator waives this requirement in writing.

VI.B.5. All permit processing fees assessed must be received within thirty days of the date of receipt of the written request therefore. All fees collected under this regulation shall be made payable to the Colorado Department of Public Health and Environment. Construction permits may be issued prior to the Division's receipt of such fees. Failure to pay the permit processing fees within ninety days of the written request for fees may result in late fees or revocation of the permit. Permits issued in accordance with Part C of this regulation may be issued upon approval by the Division of a fee payment schedule.

#### VI.C. Annual Emissions Fees

VI.C.1. As used in this Section VI., in accordance with Colorado Revised Statute Section 25-7-114.7, regulated air pollutant means:

VI.C.1.a. A volatile organic compound;

VI.C.1.b. Each hazardous air pollutant;

VI.C.1.c. Each pollutant regulated under Section 111 of the Federal Act (New Source Performance Standards), except GHG;

VI.C.1.d. Each pollutant for which a National Ambient Air Quality Standard has been promulgated, except for carbon monoxide; and

VI.C.1.e. Each pollutant regulated under Section 25-7-109, except GHG of the state Act.

VI.C.1.f. The term regulated air pollutant does not include fugitive dust as defined in Section I.B.21. of this Part A, or any fraction thereof.

VI.C.2. Every owner or operator of an air pollution source required to file an Air Pollutant Emission Notice shall pay a nonrefundable annual emissions fee as set forth in Section VI.D.3. of this Part A.



VI.C.3. All annual emissions fees assessed must be received within sixty days of the date of issuance of the written request therefore. All fees collected under this regulation shall be made payable to the Colorado Department of Public Health and Environment.

VI.C.4. In no event shall an owner or operator of a source pay more than a fee based upon total annual emissions of four thousand tons of each regulated air pollutant per source.

VI.D. Fee Schedule

VI.D.1. Air Pollutant Emission Notice filing fees shall be \$191.13.

VI.D.2. Permit processing fees shall be \$95.56 per hour.

VI.D.3. Annual emission fees for regulated pollutants shall be \$28.63 per ton. Annual emission fees for hazardous air pollutants shall be \$191.13 per ton. GHG is exempt from the requirement to pay annual emission fees.

>>>>>>>

**PART G STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE**

>>>>>>>

**I.CCC. Adopted: October 18, 2018**

Revisions to Regulation Number 3, Part A, Section VI.

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act Sections 25-7-110 and 25-7-110.5, C.R.S. ("the Act").

**Basis**

The Commission adopted revisions to Regulation Number 3, Part A to increase air pollutant emission notice filing fees, permit processing fees, and annual emission fees in accordance with House Bill 18-1400. The increase is necessary to address revenue shortage and fund existing programs. Concurrent with these revisions and also pursuant to House Bill 18-1400, the Air Pollution Control Division ("Division") has convened a stakeholder group consisting of affected industries to (1) identify and assess measures to improve billing practices and increase accounting transparency with respect to application processing fees, including providing more detail on the application review process and the time spent on the process, and (2) assess potential efficiency improvements, including associated metrics to measure the Division's performance, with respect to Division activities financed by the stationary sources control fund. Beginning in 2019, and continuing through 2023, as directed by House Bill 18-1400, the Division will present the results and progress of this stakeholder process, including improved billing practices, increased accounting transparency, implemented efficiency improvements and efficiency metrics, to the House of Representatives Health, Insurance, and Environmental Committee and the Senate Health and Human Services Committee, or any successor committees.

**Specific Statutory Authority**

The Colorado Air Pollution Prevention and Control Act, Sections 25-7-114.1 and 25-7-114.7 authorize annual emission fees, air pollutant emission notice filing fees, and permit application processing fees.

**Purpose**

The revisions to the fee provisions in Part A were adopted to address revenue shortfalls and fund existing programs.

Further, these revisions correct any typographical, grammatical, and formatting errors found within the regulation.

**CYNTHIA H. COFFMAN**  
Attorney General

**MELANIE J. SNYDER**  
Chief Deputy Attorney General

**LEORA JOSEPH**  
Chief of Staff

**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000

**Office of the Attorney General**

Tracking number: 2018-00317

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

**Air Quality Control Commission**

**on 10/18/2018**

**5 CCR 1001-5**

**REGULATION NUMBER 3 STATIONARY SOURCE PERMITTING AND AIR POLLUTANT  
EMISSION NOTICE REQUIREMENTS**

The above-referenced rules were submitted to this office on 10/19/2018 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 31, 2018 08:47:12

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General

## **Permanent Rules Adopted**

### **Department**

Department of Public Health and Environment

### **Agency**

Air Quality Control Commission

### **CCR number**

5 CCR 1001-15

### **Rule title**

5 CCR 1001-15 REGULATION NUMBER 12 REDUCTION OF DIESEL VEHICLE  
EMISSIONS 1 - eff 11/30/2018

### **Effective date**

11/30/2018

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**Air Quality Control Commission**

**REGULATION NUMBER 12**

**Reduction of Diesel Vehicle Emissions**

**5 CCR 1001-15**

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

---

**Outline of Regulation**

PART A	DIESEL FLEET SELF-CERTIFICATION PROGRAM
PART B	DIESEL OPACITY INSPECTION PROGRAM
PART C	STANDARDS FOR VISIBLE POLLUTANTS FROM DIESEL ENGINE POWERED VEHICLES (Operating on Roads, Streets and Highways)
PART D	STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

---

**PART A        DIESEL FLEET SELF-CERTIFICATION PROGRAM**

**I.        General Provisions**

**I.A.       Statement of Purpose**

The purpose of Part A of this regulation is to reduce air pollution resulting from emissions from diesel-powered motor vehicles in the Program Area through opacity inspections or exemplary maintenance, by all diesel fleets registered or routinely operated in the program area, or principally operated from a terminal, maintenance facility, branch, or division located within the program area as defined in 42-4-401 (8) C.R.S. with nine (9) or more vehicles greater than fourteen thousand pounds gross vehicle weight rating per vehicle. Regulation Number 12 is a State-Only program and is not part of any state implementation plan with the US EPA.

**I.B.       Definitions**

The following terms shall have the following meanings when used in this regulation:

- I.B.1.    "Commission" means The Colorado Air Quality Control Commission
- I.B.2.    "Compliance Plan" means a written plan of action completed by applicable diesel vehicle fleets conforming with the requirements of this regulation.
- I.B.3.    "Certification of Emissions Control" (CEC), means the official certificate issued by a private (non-government) fleet opacity inspector to a fleet vehicle which has been inspected and tested according to the procedures in Part A, IV., and is in compliance with the opacity standards.

- I.B.4. "Diesel Fleet Self-Certification Program" (DFSCP) means the Opacity Inspection Program for Diesel Powered Fleet Vehicles Established by Section 42-4-414 C.R.S., as amended, and the Air Quality Control Commission, as AQCC Regulation Number 12, Part A.
- I.B.5. "Diesel Powered Motor Vehicle" or "Diesel Vehicle" as applicable to opacity inspections, includes only a motor vehicle with four wheels or more on the ground, powered by an internal combustion, compression ignition, diesel fueled engine, and also includes such a motor vehicle having a personal property classification of A, B, or C, pursuant to Section 42-3-106, C.R.S., as specified on its vehicle registration, and for which registration in this state is required for operation on the public roads and highways. "Diesel Vehicle" does not include the following: vehicles registered pursuant to Section 42-12-301, or 42-3-306 (4), C.R.S. off- road use only powered vehicles or heavy construction equipment.
- I.B.6. "Division" means the Air Pollution Control Division of the Colorado Department of Public Health and Environment.
- I.B.7. "Excessive Violation" means non-compliance with the provisions of Part A, II.A.2.b., c., d., or i. of this regulation-, or falsely making a certification that a vehicle is "physically based and principally operated outside the program area" pursuant to 42-4-414 (2.5) or the provisions of I.E. of this Part A.
- I.B.8. "Exemplary Maintenance" means an alternative method for fleet operators to demonstrate compliance with opacity standards on vehicles ten years old or newer by electronically submitting proof of periodic maintenance performed on vehicles, subject to the qualifying criteria and requirements for fleets and vehicles contained in this Part A I.F. and I.G. Exemplary maintenance is an optional alternative to opacity testing which may be chosen at the fleet's own discretion.
- I.B.9. "Fleet" means a diesel vehicle fleet consisting of nine (9) or more diesel vehicles greater than fourteen thousand pounds gross vehicle weight rating per vehicle, registered or routinely operated in the program area, or principally operated from a terminal, maintenance facility, branch, or division located within the program area.
- I.B.10. "GVWR" (gross vehicle weight rating) means the weight specified by the vehicle manufacturer as the maximum allowable loaded weight (vehicle empty weight plus the driver, passengers and payload) of a single vehicle.
- I.B.11. "Highest opacity reading" is that greatest stable opacity value for other than the snap/free acceleration procedures.
- I.B.12. "Opacity Compliance Coordinator" means designated person from each vehicle fleet to be the contact person between the fleet and the Division for carrying out this regulation.
- I.B.13. "Opacity Determination Certification" means a valid certification to be maintained by an opacity compliance coordinator and/or other fleet personnel charged with determining opacity levels. Opacity training and certification are to be conducted by the Division.
- I.B.14. "Opacity" means the degree to which an air pollutant obscures the view of an observer expressed in percentage of obscuration, or the degree, expressed in percent, to which transmittance of light is reduced by the air pollutant.
- I.B.15. "Opacity Inspection Form" (OIF) means the official form or electronic media issued by the Division to diesel self-certification fleets for recording opacity test results.

- I.B.16. "Opacity meter" means an optical instrument which is designed to measure the opacity of diesel exhaust. Opacity meters must meet the requirements of Part B, II.C. of this Regulation. Opacity meters to be utilized for the SAE J1667 test procedures (Part A, I.V.C.5) must meet SAE J1667 specifications.
- I.B.17. "Physically Based" means the business location, including either the origination or destination of a vehicle, where a vehicle is maintained or legally parked when not in use on the road.
- I.B.18. "Principally Operated" means used to transport goods or passengers, or to operate mounted equipment within the program area for ninety or more cumulative days in a 12 month period.
- I.B.19. "Rated RPM" means a specific Revolutions Per Minute (rpm) which the manufacturer states that the engine's maximum/rated brake horsepower is attained. Rated horsepower and rpm information is usually found on a label affixed to the engine itself or other under-the-hood location.
- I.B.20. "Routinely Operated" means operated for 90 days or more in any 12 month period.
- I.B.21. "SAE J1667 specifications" and "SAE J1667 test procedures" mean the specifications and test procedures set out in *J1667 Recommended Practice, Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Motor Vehicles*, © 2018 Society of Automotive Engineers Inc. (SAE), which document is hereby incorporated into this regulation by reference. The incorporation of the *J1667 Recommended Practice* into this rule by reference does not include later amendments to or editions of the material. The *J1667 Recommended Practice* may be examined at any state publications depository library. To find out how to obtain a copy of the *J1667 Recommended Practices* contact Manager, Mobile Source Section, Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530, or visit the Society of Automotive Engineers, Inc. website at [www.sae.org](http://www.sae.org).
- I.B.22. "Terminal, Division, or Maintenance Facility" means improved real property owned, leased or otherwise lawfully held by a controlling commercial interest by the fleet and meeting applicable local zoning requirements for commercial trucking, motor coach, or truck/coach maintenance operations.
- I.B.23. "Trained Observer" means an employee or designee of the fleet who has successfully completed Opacity Inspector Training and holds a current Opacity Determination Certification issued by the Division.
- I.B.24. "WOT" means wide open throttle.

#### I.C. Applicability

##### I.C.1. Geographic Area of Applicability

This regulation shall apply to the diesel inspection program area as defined in Section 42-4-401 (8) C.R.S.

##### I.C.2. Vehicles eligible for diesel fleet self-certification program.

Heavy-duty diesel vehicles greater than fourteen thousand pounds gross vehicle weight rating, identified as a fleet (nine (9) or more vehicles) and registered or routinely operated in the program

area, or principally operated from a terminal, maintenance facility, branch, or division located within the program area are required to participate in the diesel fleet self-certification program.

I.D. Opacity Compliance Test Cycle – New Vehicle Exemption

- I.D.1. Opacity compliance tests conducted on heavy-duty diesel vehicles equal to or less than ten model years old are valid for twenty-four months.
- I.D.2. Opacity compliance tests conducted on heavy-duty diesel vehicles that are more than ten model years old are valid for twelve months.
- I.D.3. Exemplary maintenance reports submitted as an alternative to opacity testing are valid for twelve months.
- I.D.4. Any new heavy-duty diesel vehicle shall be exempt from testing until such vehicle has reached its fourth model year, or until the date of the transfer of ownership prior to the expiration of such exemption, if such transfer is within twelve months before such exemption ends.
- I.D.5. Any new heavy-duty diesel vehicle of model year 2014 or newer having a gross vehicle weight rating of twenty six thousand pounds or more is exempt from testing until such vehicle has reached its sixth model year, or until the date of the transfer of ownership prior to the expiration of such exemption, if such transfer is within twelve months before such exemption ends.

I.E. Opacity Testing Exemption for Vehicles Certified as Physically Based and Principally Operated Outside the Program Area

Heavy-duty diesel vehicles of greater than fourteen thousand pounds gross vehicle weight rating, owned by a fleet subject to the provisions of Part A, I.C.1. and 2. and registered or required to be registered in the program area that are certified by the fleet owner to be physically based and principally operated from a terminal, division, or maintenance facility outside the program area, are exempt from the opacity testing requirements of this Part A. This exemption is valid for a period of 12 months from the date the certification approved by the executive director of the department of revenue and may be renewed annually.

A vehicle exempted from opacity testing requirements that later becomes physically based and principally operated within the program area must be opacity tested within 90 days of the date its exemption expires, or within ninety days of a change to the location at which the vehicle is physically based, whichever is earlier.

I.F. Exemplary Maintenance - Fleet Enrollment Qualifying Criteria

A fleet may submit an exemplary maintenance report as an alternative to an opacity inspection for individual vehicles. In order to qualify for the exemplary maintenance alternative, a fleet must meet the following requirements:

- I.F.1. Maintain their vehicles to manufacturer's specified maintenance procedures and intervals at a minimum.
- I.F.2. Utilize a computer based, commercially available electronic maintenance management program to schedule, track and report on maintenance performed on vehicles owned/controlled by the fleet.



- I.F.3. Provide an electronic exemplary maintenance report for each exemplary maintenance eligible vehicle in a format prescribed by the Air Pollution Control Division (Division) on a reporting schedule as prescribed in this Part A, I.D.3.
- I.F.4. Maintain maintenance compliance timeliness rating with their own maintenance plan as submitted.
- I.F.5. Have maintained a standing in good status with the Diesel Fleet Self Certification Program for the past three calendar years.
- I.F.6. Submit a Division approved exemplary maintenance Compliance Plan each year, as part of the annual Compliance Plan submittal pursuant to this Part A, II.A.2.

#### I.G. Exemplary Maintenance -Vehicle Qualifying Criteria

For individual vehicles that will utilize the exemplary maintenance alternative to opacity testing, the following qualifying criteria apply:

- I.G.1. The vehicle must be owned/controlled by a fleet that qualifies to perform, and is enrolled in Exemplary Maintenance, pursuant to Part A, I.F
- I.G.2. The vehicle must be no more than ten model years old
- I.G.3. The vehicle is to be maintained to manufacturer's specified maintenance procedures and intervals, at a minimum
- I.G.4. The exemplary maintenance status must be reported to the Division in an Electronic Maintenance Report in a format approved by the Division, annually pursuant to Part A, II.A.2.i.

## II. Requirements to File Compliance Plan

### II.A. Compliance Plan Requirements and Contents

- II.A.1. Every fleet shall prepare, adopt, and submit to the Division within the time period hereinafter provided a complete Compliance Plan form signed by an authorized agent and containing a commitment to implement and maintain a program which meets the requirements of this regulation.

Each participating fleet shall provide the Division with an updated/revised Compliance Plan and fleet vehicle inventory in electronic format on an annual basis. Such plan and fleet vehicle inventory shall be submitted to the Division by December 31 of each year, to be effective for the following calendar year. Should fleet size, location, ownership, or compliance coordinator change, the Division shall be notified within thirty (30) days of a change.

- II.A.2. Each Compliance Plan shall set forth with reasonable detail a plan which shall include provisions for at least the following:

- II.A.2.a. Dissemination of written information to all employees who maintain and/or operate diesel vehicles subject to these regulations, regarding Colorado opacity laws, penalties for non-compliance, and health and environmental impacts of diesel emissions, as provided by the Division.

- II.A.2.b. Establishment of test procedures to be used for determining and certifying compliance with State opacity standards as given in Part A, VII. of this regulation.
- II.A.2.c. Establishment of maintenance practices and schedules to be followed for maintaining low-smoke levels. Maintenance schedules at a minimum will follow manufacturer's recommended procedures and intervals.
- II.A.2.d. Performance of biennial opacity compliance tests for vehicles ten years old and newer, and annual opacity compliance tests for vehicles greater than ten years old, as described in Part A, IV. of this regulation prior to the vehicle's annual registration on each vehicle subject to these regulations, repair of any vehicle found to be exceeding the State opacity standard (found in Part A, VII. of this regulation) and bring it into compliance with State opacity standards before being returned to service, maintaining records of such testing, including the opacity inspection form and any other forms provided by the Division and submit the white copies of the opacity inspection form to the Division annually by December 31, of each year. Subsequent year forms and documents may not be dispensed to fleets which fail to submit the prior year opacity inspection forms to the Division as required.
- II.A.2.e. Establishment of an Opacity Compliance Coordinator from each fleet to oversee the carrying out of this regulation.
- II.A.2.f. Determination of vehicle smoke opacity by a Trained Observer employed or designated by the fleet having possession of a valid opacity determination certification issued by the Division. Such persons shall determine vehicle smoke opacity levels by either the visual method or by use of a continuous-reading, light extinction opacity meter with peak hold feature or interfaced chart recorder. Such test shall use an opacity meter for vehicles that are greater than ten model years old.
- II.A.2.g. Participating fleets shall electronically submit a fleet vehicle information inventory in a format prescribed by the Division, including but not necessarily limited to make, VIN, unit ID, and license plate type, number and state.
- II.A.2.h. Notwithstanding the provisions of Part A, II.A.2.d., new heavy-duty diesel vehicles having a GVWR of less than twenty six thousand pounds shall be issued a certification of emissions compliance without inspection or testing. Such certification shall expire on the anniversary of the day of the issuance of such certification when such vehicle has reached its fourth model year or on the date of the transfer of ownership if such date is within twelve months before such certificate would expire, pursuant to Part A, I.D.4., or unless such transfer of ownership is a transfer from the lessor to the lessee. Prior to the expiration of such certification, such vehicle shall be inspected pursuant to Section IV of this Part A, IV. New heavy-duty diesel vehicles having a GVWR of twenty six thousand pounds or more shall be issued a certification of emissions compliance without inspection or testing. Such certification shall expire on the anniversary of the day of the issuance of such certification when such vehicle has reached its sixth model year or on the date of the transfer of ownership if such date is within twelve months before such certificate would expire, pursuant to Part A, I.D.5., or unless such transfer of ownership is a transfer from the lesser to the lessee. Prior to the expiration of such certification, such vehicle shall be inspected pursuant to Section IV of this Part A.
- II.A.2.i. A fleet qualifying to utilize the exemplary maintenance alternative must electronically submit an Exemplary Maintenance Plan, as part of the Compliance

Plan, for those eligible vehicles that will not be opacity tested. The Exemplary Maintenance Plan must contain vehicle maintenance profiles and a commitment by the fleet to adhere to those maintenance profiles. Maintenance profiles are to be based on the fleet's determination of maintenance needs for their own vehicles, but must be no less stringent than those prescribed by the engine manufacturer for that engine in that application. The Exemplary Maintenance Plan must contain other vehicle specific information as prescribed by the Division.

## **II.B. Additional requirement**

Each Opacity Compliance Coordinator shall provide to all new employees or newly reassigned employees who work in the maintenance or operation of diesel vehicles, the most current information regarding this regulation and the Fleet's Compliance Plan within thirty (30) days of the employees' commencing work. Each Opacity Compliance Coordinator shall provide updated information to all employees regarding this regulation within thirty (30) days of any substantial change to this regulation and/or the Fleet's Compliance Plan.

## **III. Compliance Plan Filing – Time, Approval**

### **III.A. Filing of Plans**

Fleets which meet the applicability criteria of this Regulation Number 12 are required to participate in the Diesel Fleet Self Certification Program, Part A of this Regulation Number 12 (DFSCP), and such fleets bear the responsibility of contacting and notifying the Division of their fleet status and intent to participate in the DFSCP. Affected fleets shall complete and submit a Compliance Plan and a vehicle inventory to the Division for approval within 30 days of initial contact with the Division.

### **III.B. Approval and Disapproval**

The Division shall review and evaluate each Compliance Plan (and exemplary maintenance plan, if submitted) filed with it within thirty (30) days of its receipt by the Division. Upon approval of a Compliance Plan (and exemplary maintenance plan, if submitted), the Division shall return an approved copy of the plan to the Fleet who shall post the plan in a conspicuous place in the business location. If a Compliance Plan (or exemplary maintenance plan, if submitted) as filed is disapproved by the Division, the Division shall issue a letter of disapproval, and the Fleet shall have thirty (30) days within which to revise the plan and resubmit it to the Division. The Division shall have thirty (30) days to approve or disapprove the resubmitted plan.

III.C. Heavy-duty diesel-fueled motor vehicles owned by the United States government, State of Colorado, and local governments within the Program area, subject to the provisions of Part A of this regulation shall be inspected once every other year, (for vehicles ten years old, and newer), or every year (for vehicles greater than ten years old), and shall comply with the inspection provisions and obtain a Certification of Emissions Control. Inspection results will be reported to the Department of Revenue by submission of the Certification of Emissions Control not later than December 31, of each year.

## **IV. Heavy-duty Diesel Vehicle Self-Certification Opacity Test Procedures**

### **IV.A. Opacity Evaluation Methods**

Fleets shall utilize one of the following two methods of evaluating smoke opacity.

IV.A.1. A visual evaluation by means of a smoke observer trained and certified by the Colorado Department of Public Health and Environment. The observer is to be positioned in a

location perpendicular to the exhaust plume and at a distance which will provide a clear view of the exhaust plume. Visual observation shall not be used on vehicle that is older than ten model years.

- IV.A.2. Opacity meter evaluation of the exhaust stream by means of a portable light extinction opacity meter as specified in Part B, II.C.1. of this regulation. The meter is to be attached to the exhaust piping and calibrated as specified by the manufacturer. Opacity meters to be utilized for the Snap acceleration J1667 test procedures (Part A, IV.C.5.) must meet SAE J1667 specifications.

#### IV. B. Test Site and Vehicle Parameters

- IV.B.1. On-Road test procedures will require a testing site approximately 300 yards in length that is suitable for vehicle full-power runs to be conducted in complete safety.
- IV.B.2. An ambient temperature of 35°F (1.7°C) or above is required during any given vehicle test.
- IV.B.3. Vehicles scheduled for opacity testing shall be in safe operating condition.
- IV.B.4. Vehicles shall be at normal operating temperatures.
- IV.B.5. If the vehicle to be tested is equipped with multiple exhaust outlets and if it is determined that they emit different exhaust smoke levels, the outlet emitting the heavier smoke level shall be opacity evaluated.
- IV.B.6. Vehicles undergoing opacity testing are to use fuel obtained from the fleet's normal fuel supply. No special fuels, fuel additives, or devices are to be utilized for the sole purpose of obtaining opacity readings during testing that are lower than those typically observed when the vehicle is operating on the fleet's usual fuel supply.

#### IV.C. Self-Certification Program Opacity Test Procedures

Fleets shall inspect their vehicles for compliance with opacity standards as defined in Part A, VII. by utilizing one of the following test procedures, Part A, IV.C.1. through 5. Fleets that utilize the SAE J1667 test procedures in Part A, IV.C.5. shall use such procedures on all its vehicles.

##### IV.C.1. On- Road acceleration Test Procedure

- IV.C.1.a. Select a gear which will permit the vehicle to accelerate under wide open throttle (WOT) from a moving position (approximately 900 to 1000 engine rpm) up to maximum engine rpm in no less than seven (7) seconds. This step is vital in order to ensure that the engine will be operated in an rpm range and timeframe which will allow sufficient time and engine loading in order to accurately monitor the vehicle's smoke opacity levels. Upon completing the gear selection, bring vehicle to a stop.
- IV.C.1.b. If an opacity meter is being utilized, shut down the engine and verify the zero setting of the opacity meter. Clean the monitoring unit as necessary.
- IV.C.1.c. Restart engine and with the transmission in the selected gear as described in Step 1.a., accelerate the vehicle under WOT from a road speed equivalent of 900 to 1000 engine rpm up to maximum engine rpm.

If a visual opacity observation is being used, alert the certified observer by means of a horn or other communication that the test is completed and to record on the opacity inspection worksheet the highest opacity which was observed in an engine rpm range which encompasses 70% of rated rpm up to maximum governed rpm. If an opacity meter was utilized, note and record the highest opacity reading displayed during the aforementioned rpm range.

IV.C.1.d. Bring the vehicle to a safe controlled stop and shutdown the engine. Examine opacity meter reading, if applicable, and if there is more than a five percent (5%) shift (deviation) in the zero position and the highest opacity reading observed during the test exceeds the standard as defined in Part A, VII., clean the meter lenses, zero the meter and repeat the procedure beginning at Step 1.c.

IV.C.1.e. If the highest opacity observed during Step 1.c. exceeds the opacity standard and the opacity meter zero shift, if applicable, is less than five percent (5%), the vehicle fails the inspection.

IV.C.1.f. If neither the highest opacity observed during Step 1.c. nor the opacity meter zero shift, if applicable, exceeds the opacity standard, the vehicle passes the inspection.

IV.C.1.g. The opacity inspector shall then record the highest opacity reading, the opacity meter zero shift (if applicable), the pass/fail determination and provide a signature on the Opacity Inspection Form. Vehicles which comply with the inspection procedures and applicable opacity standards shall be issued a complete CEC.

#### IV.C.2. On-Road Brake Lugdown Test Procedure

IV.C.2.a. Select a gear which will permit the vehicle to attain a road speed of 15 to 25 mph with the engine at maximum rpm, wide open throttle (WOT). Due to the many variables, this gear selection is basically a trial and error effort. Upon completing the gear selection, bring vehicle to a stop.

IV.C.2.b. If an opacity meter is being utilized, shutdown the engine and verify the zero setting of the opacity meter. Clean the monitoring unit as necessary.

IV.C.2.c. Restart engine and with the vehicle operating at WOT in the selected gear as described in Step 2.a., maintain WOT and slowly begin loading the engine by means of the vehicle's service brakes. The loading is to be applied linearly throughout an engine rpm range which extends from maximum engine rpm down to seventy percent (70%) of the engine's rated rpm in a time span which encompasses no less than seven (7) seconds.

IV.C.2.d. Momentarily maintain the seventy percent (70%) rated rpm/WOT relationship and if a visual opacity observation is being used, alert the certified observer by means of a horn or other communication that the test is completed and to record on the opacity inspection worksheet the highest opacity which was observed during the brake lugdown procedure.

If an opacity meter was utilized, note and record the highest opacity reading displayed during the brake lugdown procedure.

IV.C.2.e. Bring the vehicle to a safe controlled stop and shutdown the engine. Examine opacity meter reading, if applicable, and if there is more than a five

percent (5%) shift (deviation) in the zero position, and the highest opacity reading observed during the test exceeds the standard as defined in Part A, VII., clean the meter lenses, zero the meter, and repeat the procedure beginning at Step 2.c.

IV.C.2.f. If the highest opacity observed during Step 2.c. exceeds the opacity standard and the opacity meter zero shift, if applicable, is less than five percent (5%), the vehicle fails the inspection.

IV.C.2.g. If neither the highest opacity observed during Step 2.c. nor the opacity meter zero shift, if applicable, exceeds the opacity standard, the vehicle passes the inspection.

IV.C.2.h. The opacity inspector shall then record the highest opacity reading, the opacity meter zero shift (if applicable), the pass/fail determination and provide a signature on the Opacity Inspection Form. Vehicles which comply with the inspection procedures and applicable opacity standards shall be issued a complete CEC.

#### IV.C.3. Stall Test Procedure (Vehicles with Automatic Transmissions)

This is a full-load stationary test designed for vehicles equipped with automatic transmissions.

IV.C.3.a. Transmission/torque converter oil is to be at normal operating temperature (160 to 200° F).

IV.C.3.b. If an opacity meter is being utilized, verify the zero setting of the opacity meter. Clean the monitoring unit if necessary.

IV.C.3.c. Start engine and operate at idle rpm. Apply vehicle's parking brake and securely block the vehicle. Apply the service brakes and shift the transmission gear selector to a forward range.

IV.C.3.d. Accelerate the engine by means of wide open throttle (WOT) until the transmission's stall speed rpm is attained. Maintain stall speed rpm for approximately five seconds in order to allow for stabilization.

IV.C.3.e. Momentarily maintain stall speed rpm and if a visual opacity observation is being used, alert the certified observer by means of a horn or other communication that the test is completed and to record on the opacity inspection worksheet the opacity attained at this time (stall speed rpm).

If an opacity meter is utilized, note and record the opacity meter reading at this time (stall speed rpm).

IV.C.3.f. Return the engine to idle rpm and shut down the engine.

Examine opacity meter reading, if applicable, and if there is more than a five percent (5%) shift (deviation) in the zero position, and the highest opacity reading observed during the test exceeds the standard as stated in Part A, VII., clean the meter lenses, zero the meter and repeat the procedure beginning at Step 3.c.

Allow approximately two minutes of neutral operation between stall tests in order to prevent overheating of the transmission. During the two-minute period, maintain 1000 to 1400 engine rpm.

IV.C.3.g. If the highest opacity observed during Step 2.e. exceeds the opacity standard and the opacity meter zero shift, if applicable, is less than five percent (5%), the vehicle fails the inspection.

IV.C.3.h. If neither the highest opacity observed during Step 2.e. nor the opacity meter zero shift, if applicable, exceeds the opacity standard, the vehicle passes the inspection.

IV.C.3.i. The opacity inspector shall then record the highest opacity reading, the opacity meter zero shift (if applicable), the pass/fail determination and provide a signature on the Opacity Inspection Form. Vehicles which comply with the inspection procedures and applicable opacity standards shall be issued a complete CEC.

#### IV.C.4. Dynamometer Test Procedure

IV.C.4.a. If a smoke opacity meter is being used, verify the meter is set at zero. Start engine and with the dynamometer in an unloaded mode/condition, select a gear which will allow the vehicle to attain and maintain a no-load vehicle speed of 60 to 70 miles per hour (mph) at wide open throttle (WOT). It is preferred and recommended that vehicles be operated at the lower end of this mph range whenever possible. If vehicle has a maximum road speed that is less than 60 mph, operate vehicle at the highest mph possible. Upon stabilization, maintain speed for ten (plus or minus four) seconds and record engine rpm and mph on opacity worksheet.

IV.C.4.b. While maintaining wide open throttle (WOT), slowly increase the dynamometer loading until engine rated rpm (plus or minus 15 rpm) is obtained. Maintain this speed/load for ten (plus or minus four) seconds and record engine rpm, smoke opacity, and horsepower (hp).

IV.C.4.c. Maintain wide open throttle (WOT) and slowly increase dynamometer loading until engine is at 90 percent of rated rpm (plus or minus 15 rpm). Maintain this speed/load for ten (plus or minus four) seconds and record engine rpm, smoke opacity, and hp.

IV.C.4.d. Maintain wide open throttle (WOT) and slowly increase dynamometer loading until engine is at 80 percent of rated rpm (plus or minus 15 rpm). Maintain this speed/load for at least ten (plus or minus four) seconds and record engine rpm, smoke opacity, and hp.

IV.C.4.e. Maintain wide open throttle and slowly increase dynamometer loading until engine is at 70 percent of rated rpm (plus or minus 15 rpm). Maintain this speed/load for ten (plus or minus four) seconds and record engine rpm, smoke opacity, and hp. This step concludes the engine loading procedure; do not apply additional loading under any circumstances.

IV.C.4.f. Vehicles with automatic transmissions are allowed two downshifts to the next lower gear at any point during the dynamometer lugdown test. If a downshift occurs, continue with the test.

IV.C.4.g. Remove dynamometer loading and shut down engine after observing engine cool down procedure.

IV.C.4.h. Examine opacity meter reading, if applicable, and if there is more than a five percent (5%) shift (deviation) in the zero position and the highest opacity reading observed during the test exceeds the standard as defined in Part A, VIII., clean the meter lenses, zero the meter and repeat the procedure beginning at Step 4.a.

IV.C.4.i. If the highest opacity observed during Steps 4.b. through 4.e. exceeds the opacity standard and the opacity meter zero shift, if applicable, is less than five percent (5%), the vehicle fails the inspection.

IV.C.4.j. If neither the highest opacity observed during Step 4.b. through 4.e. nor the opacity meter zero shift, if applicable, exceeds the opacity standard, the vehicle passes the inspection.

IV.C.4.k. The opacity inspector shall then record the highest opacity reading, the opacity meter zero shift (if applicable), the pass/fail determination and provide a signature on the Opacity Inspection Form. Vehicles which comply with the inspection procedures and applicable opacity standards shall be issued a complete CEC.

#### IV.C.5. SAE J1667 Test Procedures.

If the SAE J1667 test procedures are used, the inspector shall comply with the procedures and specifications set out in SAE J1667 Recommended Practice, Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Motor Vehicles, © 1996 Society of Automotive Engineers Inc. (SAE), which document is incorporated herein by reference as provided in Part A, I.B.16.

The opacity inspector shall then record the average opacity reading, the pass/fail determination and sign the Opacity Inspection Form. Vehicles which comply with the inspection procedures and applicable opacity standards shall be issued a completed CEC.

#### IV.D. Optional No-Load Opacity Test.

The opacity results of these tests (Part A, IV.D.1. and IV.D.2.) are for data collection and engine diagnosis information only and will not be used in determining a vehicle's compliance with Part A, VII. opacity standards.

##### IV.D.1. High Idle Opacity Test Procedure

IV.D.1.a. If an opacity meter is being utilized, verify the zero setting of the meter. Start engine and operate at idle rpm.

IV.D.1.b. With the transmission in neutral, slowly increase the engine speed to high idle (maximum governed no-load rpm) and allow engine rpm to stabilize.

IV.D.1.c. Momentarily maintain high idle rpm and if a visual observation is being used, alert the trained observer by means of a horn or other communication that the test procedure has reached completion and the observer is to record the opacity observed at this time (high idle rpm).

If an opacity meter is utilized, note and record the meter reading/value at this time (high idle rpm).



IV.D.1.d. Return the engine to idle rpm and shutdown the engine. Enter the highest opacity reading observed and record in Step 1.c.

IV.D.2. Snap/Free Acceleration Test Procedure. This procedure requires a rapid wide open throttle (WOT) no-load acceleration of the engine from low idle rpm to maximum governed no-load engine rpm with the transmission in neutral.

IV.D.2.a. If an opacity meter is being utilized, verify the zero setting of the meter. Start engine and operate at idle rpm.

IV.D.2.b. With the transmission in neutral and the engine at idle rpm, slowly accelerate the engine, allowing the engine to reach its maximum stabilized, no-load governed speed/rpm. Allow the engine to return to idle.

IV.D.2.c. If an opacity meter is being utilized, place the meter in "Peak Hold" position. If a visual observation is being used, the certified observer shall note and record the highest opacity observed during the following Step 2.d. rapid acceleration procedure.

IV.D.2.d. Perform the acceleration procedure as described in Step 2.b. but accelerate the engine as rapidly as possible. Allow engine to return to idle and shut down engine.

IV.D.2.e. Enter on the opacity inspection form the highest opacity observed and recorded by the trained observer or captured by the opacity meter's peak hold feature, whichever is applicable.

IV.E. The Division has the authority to determine the applicability of this regulation for unique testing situations not specifically addressed in this regulation.

## **V. Determination of Compliance**

### **V.A. On-Site Fleet Inspection**

The Division shall have the authority to determine a Fleet's compliance with this regulation or the Fleet's Compliance Plan (or exemplary maintenance plan, if submitted) by personal inspection of a Fleet's Business Location. The Division shall notify each inspected fleet of any violations of this regulation or the Fleet's Compliance Plan (or exemplary maintenance plan, if submitted) immediately upon completion of the inspections and shall be supplied with a written report of the results of the inspection within thirty (30) days of the inspection date. Such inspections by the Division may not be made more frequently than twice in any twelve (12) month period unless complaints of violation of this regulation have been received by the Division or the Division otherwise has cause to believe that the Fleet is not in compliance with the requirements of this regulation or the Fleet's Compliance Plan (or exemplary maintenance plan, if submitted). Such inspections may be made by the Division only during the normal working hours of a Fleet. The time of inspection will be determined by the Division, but must be at times reasonably convenient to the fleet. Individual vehicles of the fleet requested by the Division should be available at the time of inspection, as reasonably convenient to the fleet operators, with advance notice by the Division of such inspection.

### **V.B. Record Keeping Requirements**

Opacity test results from the annual inspections shall be kept by the Fleets and shall be available to the Division for inspections as described in Part A, V.A. Copies of test data shall be submitted to the Division annually by December 31 of each year. Fleets which fail to submit the test data to the Division as

required may not be dispensed forms and documents for the following year. Standardized test forms shall be developed and provided by the Division.

- V.B.1. Exemplary maintenance annual Electronic Maintenance Reports shall be kept by the fleets and shall be available to the Division at inspections as described in Part A, V.A. Copies of Electronic Maintenance Reports shall be submitted to the Division by December 31 of each year. Exemplary maintenance fleets which fail to submit Electronic Maintenance Reports, or fail to submit Electronic Maintenance Reports that demonstrate compliance with the elements of that fleet's exemplary maintenance plan as required, may be denied the opportunity to participate in the exemplary maintenance alternative for up to three years, at the discretion of the Division Director.

#### V.C. Testing Exemption Certification Records

Certification made by the fleet owner and approved by the Executive Director of the Department of Revenue that a vehicle is physically based and principally operated from a terminal, division, or maintenance facility outside the program area as described in Part A, I.E. shall be kept by the Fleet Compliance Coordinator and shall be made immediately available to the Division at inspections as described in Part A, V.A.

### VI. Penalties for Non-Compliance

- VI.A. Two or more excessive violations within a 12 month period, as defined in Part A, I.B.7. of this regulation shall result in the fleet being required to participate in the diesel opacity inspection program (Regulation 12, Part B) for a minimum of one year commencing at the beginning of the next calendar year.
- VI.B. Exemplary maintenance fleets may be discontinued from enrollment for excessive violations. Exemplary maintenance fleets which fail to submit Electronic Maintenance Reports, or fail to submit Electronic Maintenance Reports that demonstrate compliance with the elements of that fleet's Exemplary Maintenance Plan as required, or that falsify maintenance records or Electronic Maintenance Reports, may be discontinued from enrollment in the exemplary maintenance program.
- VI.C. Excessive violations shall be reported to the Executive Director of the Department of Revenue for enforcement action at the Executive Director's discretion and authority, which may include a hold to be placed on the violating vehicle's registration. If such hold is issued, the Fleet shall make a demonstration of compliance to the Division. The Division shall report to the Executive Director of the Department of Revenue that compliance has been demonstrated.

### VII. Opacity Standards for Diesel-Powered Motor Vehicles Subject to Part A of This Regulation.

Subject to the provisions of Section 42-4-413, C.R.S., as amended, and Section 42-4-414, C.R.S., as amended vehicles inspected following the procedures established in the Part A of this regulation shall meet the following opacity standards. The smoke opacity standard for all diesel vehicles subject to loaded mode opacity test, under Part A, IV.C.1. through IV.C.4. of this regulation shall be thirty-five percent (35%) and twenty percent (20%) for naturally aspirated and turbocharged diesel vehicles respectively for five (5) seconds. The smoke opacity standard for all diesel vehicles of model year 1991 and newer subject to snap acceleration J1667 opacity tests, under Part A, IV.C.5. of this regulation shall be 40% opacity. The smoke opacity standard for all diesel vehicles of model year 1990 and older subject to snap acceleration J1667 opacity tests, under Part A, IV.C.5. of this regulation shall be 55% opacity.

## PART B DIESEL OPACITY INSPECTION PROGRAM

### I. General Provisions

#### I.A. Statement of Purpose

The purpose of Part B of this regulation is to reduce air pollution resulting from emissions from diesel powered motor vehicles, as defined in Part B of this regulation, registered or required to be registered, routinely operated in the program area, or principally operated from a terminal, maintenance facility, branch, or division located within the Program area, and not subject to Part A of this regulation.

#### I.B. Definitions

- I.B.1. "AIR Account" is a special fund set aside in the Highway Users Tax Fund for the operation of the "AIR Program" and the "Diesel Opacity Inspection Program".
- I.B.2. "Air Environmental Systems Technician" mean those persons employed by the Department of Revenue for licensing and enforcement of the AIR Program and the Diesel Opacity Inspection Program.
- I.B.3. "AIR Program" is the Automobile Inspection and Readjustment (AIR) Program established pursuant to Sections 42-4-301 to 42-4-316.5 C.R.S. as amended.
- I.B.4. "AQCC" means Air Quality Control Commission.
- I.B.5. "Basic Engine Systems" are those parts or assemblies which provide for the efficient conversion of diesel fuel into useful power to include, but not limited to valve train mechanisms, cylinder heads, block, piston-ring-cylinder sealing integrity and post-combustion emissions control devices.
- I.B.6. "Certificate of Qualification" means official certificate issued by the Division to candidates who have successfully completed the Division-provided qualification/requalification training and passed the qualification test. This Certification is required in order to become licensed as a diesel opacity inspector in the Diesel Opacity Inspection Program.
- I.B.7. "Certification of Diesel Smoke Opacity Compliance" is the document which indicates that the smoke emissions from the vehicle comply with applicable smoke opacity limits and the emissions control systems are installed, intact and apparently operational at the time of inspection or after needed adjustments or repairs and re-inspection.
- I.B.8. "Certification of Diesel Smoke Opacity Waiver" is the document issued by the Department of Revenue, which indicates that the smoke emissions from the vehicle do not comply with the applicable smoke opacity limits after inspection, adjustment and smoke-related repairs.
- I.B.9. "Certification" or "Certification of Emissions Control" means either a "Certification of Diesel Smoke Opacity Compliance" or "Certification of Diesel Smoke Opacity Waiver" issued to the owner of a diesel vehicle which is subject to the diesel emissions inspection program in order to indicate the status of inspection requirement compliance of such a vehicle.
- I.B.10. "Certification of Emissions Exemption" means the official document issued by the Department of Revenue, in lieu of the Certification of Emissions Control.
- I.B.11. "Certified Neutral Density Filter" means an optical quality filter which reduces the amount of transmitted light, an amount which is dependent upon the filter's optical density rating, uniformly across the visible light spectrum, for the purpose of verifying the accuracy of the opacity meters.

- I.B.12. "Certified Thermometer" means a laboratory grade ambient temperature measuring device with a range of at least 20°F through 120°F and an attested accuracy of at least plus or minus 1°F with increments of 1°, with protective shielding, and approved by the Department.
- I.B.13. "Chassis Dynamometer" means a vehicle power absorption device which has the ability to approximate or simulate actual on-road operation of motor vehicles through the application of variable loading.
- I.B.14. "Commission" means Colorado Air Quality Control Commission.
- I.B.15. "Department" means Department of Revenue.
- I.B.16. "Diesel Opacity Inspection" means an inspection of a diesel powered vehicle performed by a licensed inspector, employed by a licensed station, pursuant to 42-4-406 C.R.S., using the procedures and provisions set forth in Part B of Regulation Number 12 and Department rules.
- I.B.17. "Diesel Opacity Inspection Program" means the opacity inspection program for diesel powered vehicles established by 42-4-401 to 42-4-412 C.R.S., as amended and Regulation Number 12, Part B.
- I.B.18. "Diesel Opacity Inspection Program Station" is a station that qualifies and is licensed to operate as an emissions inspection station for light or heavy-duty diesel vehicles, or both in accordance with requirements set forth in 42-4-407 C.R.S., as amended, AQCC Regulation Number 12, Part B, and Department of Revenue Rules at 1 CCR 204-1 required under 42-4-405 C.R.S.
- I.B.19. "Diesel Opacity Inspector" means an individual licensed to perform opacity inspections on vehicles required under 42-4-406 C.R.S. who is employed at a licensed diesel opacity inspection station and is trained and qualified in accordance with AQCC Regulation Number 12, Part B and the Department of Revenue.
- I.B.20. "Diesel Powered Motor Vehicle" or "Diesel Vehicle" as applicable to opacity inspections, includes only a motor vehicle with four wheels or more on the ground, powered by an internal combustion, compression ignition, diesel fueled engine, and also includes any motor vehicle having a personal property classification of A, B, or C pursuant to Section 42-3-106, C.R.S., as specified on its vehicle registration, and for which registration in this state is required for operation on the public roads and highways. "Diesel Vehicle" does not include the following: vehicles registered pursuant to 42-12-301, or 42-3-306 (4) C.R.S., or off-the-road diesel powered vehicles or heavy construction equipment.
- I.B.21. "Diesel Vehicle Inspection Report (DVIR)" means an official form and media issued by the Colorado Department of Revenue to licensed diesel opacity inspection stations, which contains Certification of Emissions Control record information.
- I.B.22. "Division" is the Air Pollution Control Division of the Colorado Department of Public Health and Environment.
- I.B.23. "Emissions Control Systems" are those parts, assemblies or systems originally installed by the manufacturer in or on a vehicle for the specific purpose of reducing emissions.
- I.B.24. "Engine Rated RPM" means a specific Revolutions Per Minute (rpm) at which the manufacturer states that the engine's maximum/rated brake horsepower is attained. Above this rpm, the engine's governor will typically begin limiting full load fuel quantity

and thus prevent the engine from developing full power beyond this rpm. Rated engine power and speed information is usually found on a label affixed to the engine itself or other under-the-hood location.

- I.B.25. "Exhaust Aftertreatment" means any post combustion emissions control system that reduces emissions by chemical, catalytic, or mechanical action, and may include diesel oxidation catalysts, diesel particulate filters, lean NOx traps, selective catalytic reduction, or other technologies. Exhaust aftertreatment also includes the piping, wiring, sensors, diesel emissions fluid, control systems, and software as installed by the vehicle/engine manufacturer.
- I.B.26. "GVWR" (gross vehicle weight rating) means the weight specified by the vehicle manufacturer as the maximum allowable loaded weight (vehicle empty weight plus the driver, passengers and payload) of a single vehicle.
- I.B.27. "Heavy-duty Diesel Vehicle" as applicable to the Diesel Opacity Inspection Program refers to diesel vehicles of greater than fourteen thousand pounds GVWR.
- I.B.28. "Heavy-duty Diesel Opacity Inspection Station" means a facility licensed to inspect heavy-duty diesel vehicles only.
- I.B.29. "Heavy-duty Dynamometer" means a chassis dynamometer meeting the requirements for accurately and safely testing heavy-duty vehicles.
- I.B.30. "Highest Opacity Reading" is that greatest stable opacity value for other than the snap/free acceleration procedure.
- I.B.31. "ISO" means International Standards Organization.
- I.B.32. "Light-duty Diesel Opacity Inspection Station" means a facility licensed to inspect light-duty diesel vehicles only (fourteen thousand pounds GVWR and less).
- I.B.33. "Light-duty Diesel Vehicle" as applicable to the Diesel Opacity Inspection Program refers to diesel vehicles of fourteen thousand pounds and less GVWR.
- I.B.34. "Light-duty Dynamometer" means a chassis dynamometer meeting the requirements for testing light-duty vehicles. These dynamometers may have a limited heavy-duty capability.
- I.B.35. "Maximum No-Load RPM or HIGH Idle RPM" means the maximum rpm that the engine's governor will allow the engine to attain under no-load, wide open throttle (WOT) conditions.
- I.B.36. "MPH" means miles per hour.
- I.B.37. "On-Road Test Procedures" means the heavy-duty diesel test procedures described in Part B III.D. of this regulation.
- I.B.38. "Opacity" means the degree to which an air pollutant obscures the view of an observer expressed in percentage of obscuration, or the degree, expressed in percent, to which transmittance of light is reduced by the air pollutant.
- I.B.39. "Opacity Meter" means an optical instrument which is designed to measure the opacity of diesel exhaust.

- I.B.40. "Opacity Meter Calibration Form" means the official electronic record for recording weekly opacity meter calibration procedures, to be maintained on the inspection station's computer.
- I.B.41. "Opacity Testing" means the testing of motor vehicles using procedures prescribed in this regulation in order to determine the magnitude (expressed as a percentage) of obscured light (opacity) due to exhaust constituents, mainly fine particles.
- I.B.42. "Opacity Worksheet" means worksheet provided by the Division for recording measured opacity levels during dynamometer testing for determining opacity compliance, to be maintained in a file at the station for auditing purposes.
- I.B.43. "Photo tachometer" means a non-contact rotational speed measuring instrument which processes data received from a reflected light beam and remotely displays the results as revolutions per minute (rpm).
- I.B.44. "RPM" means revolutions per minute as pertaining to engine crankshaft speed.
- I.B.45. "Routinely Operated" or "Principally Operated" means operated for 90 days or more in any 12 month period.
- I.B.46. "SAE" means Society of Automotive Engineers.
- I.B.47. "State Emissions Technical Centers" are those facilities, operated by the Department of Public Health and Environment for technical or administrative support of the AIR Program and the Diesel Opacity Inspection Program.
- I.B.48. "Stripchart Recorder or Digital Recording Device" means an instrument which receives and records data from one or more electrical inputs and displays that information in the form of real-time, continuous (non-impact) tracings on paper, or stores and displays that information electronically.
- I.B.49. "Training Program" means instruction developed by the Division for training diesel opacity inspectors. Successful completion of qualification and requalification training is a prerequisite to taking the inspector qualification test and receiving a Certificate of Qualification.
- I.B.50. "WOT" means wide open throttle.

I.C. Applicability

I.C.1. Geographic Area of Applicability

This regulation shall apply to the diesel inspection Program area as defined in Section 42-4-401 (8) C.R.S.

I.C.2. Vehicles Eligible for Diesel Opacity Inspection Program

Part B of this regulation shall apply to all diesel-fueled motor vehicles as defined in Section 42-4-401 (5) C.R.S., except those diesel-powered vehicles subject to the provisions for Part A of this regulation (Diesel Fleet Self-Certification Program), pursuant to Section 42-4-414, C.R.S.

I.C.2.a. The burden of proof in establishing an exemption from all or any part of the diesel opacity inspection requirements is on the vehicle owner. Any applications for

exemptions must be submitted to the Colorado Department of Revenue for approval.

I.D. Conditions for Issuance of Certification of Emissions Control

I.D.1. A diesel vehicle which is registered or required to be registered in the program area, routinely operates in the program area or is principally operated from a terminal, maintenance facility, branch or division located within the program area shall not be sold, registered for the first time in the program area or reregistered, unless such vehicle has a Certification of Emissions Control.

I.D.2. For new diesel motor vehicles being registered for the first time, a Certification of Emissions Control shall be issued without testing for diesel opacity compliance. Prior to the expiration of such certification, such vehicle shall be inspected and a Certification of Emissions Control shall be obtained for diesel smoke opacity compliance.

I.D.2.a. For light-duty diesel vehicles, such certificate shall expire on the earliest of:

I.D.2.a.i. The anniversary of the day of the issuance of such certification when such vehicle has reached its fourth model year.

I.D.2.a.ii. The date of the transfer of ownership if such date is within twelve months before such certification would expire, pursuant to Part B, I.D.2.a.i., unless such transfer of ownership is a transfer from the lessor to the lessee.

I.D.2.b. For heavy-duty vehicles, such certification shall expire on the earliest of:

I.D.2.b.i. The anniversary of the day of the issuance of such certification when such vehicle has reached its fourth model year, or

I.D.2.b.ii. The date of the transfer of ownership if such date is within twelve months before such certification would expire, pursuant to Part B, I.D.2.a.i. unless such transfer of ownership is a transfer from the lessor to the lessee.

I.D.2.b.iii. Any new heavy-duty diesel vehicle of model year 2014 or newer having a GVWR of twenty six thousand pounds or greater is exempt from testing until such vehicle has reached its sixth model year, or until the date of the transfer of ownership prior to the expiration of such exemption, if such transfer is within twelve months before such exemption ends.

I.D.2.c. For heavy-duty diesel vehicles ten model years old and newer, the Certificate of Emissions Control will be valid for two years from the date of issuance.

I.D.2.d. For light-duty diesel vehicles ten model years old and newer, the certificate of emissions control will be valid for two years from the date of issuance.

I.D.2.e. For heavy-duty diesel vehicles greater than ten model years old, the Certificate of Emissions Control will be valid for one year from the date of issuance.

I.D.2.f. For light-duty diesel vehicles greater than ten model years old, the certificate of emissions control will be valid for one year from the date of issuance.

- I.D.3. For used diesel vehicle retail sales transactions by a licensed dealer conducted within the Program area, a Certification of Diesel Smoke Opacity Compliance will be required at the time of sale. The responsibility of complying with the inspection provisions is that of the selling dealer.
- I.D.4. A "Certification of Diesel Smoke Opacity Compliance" shall be issued by a licensed diesel inspection station to any diesel vehicle which has been inspected and tested according to the procedures in Part B, III. of this regulation and found to be within applicable smoke opacity limits and equipment requirements as stated in Part B, IV. and V., of this regulation.
- I.D.5. No Certification of Diesel Emissions Control may be issued to a diesel vehicle of model year 1991 and newer if there is evidence of diesel emissions control system tampering, as determined by the procedures described in Part B, III. A.4. of this regulation.
- I.D.6. A temporary Certification of Emissions Control may be issued by a Department of Revenue AIR Program Air Environmental Systems Technician to those vehicles which fail the initial opacity inspection and continue to exceed applicable opacity standards, and for which needed parts are not presently available in order to make corrective repairs to that specific vehicle.
- I.D.7. A "Certification of Diesel Smoke Opacity Waiver" shall be issued by a Department of Revenue AIR Program Air Environmental Systems Technician to any diesel vehicle which has been re-inspected after failing the initial opacity inspection procedure as prescribed in Part B, III. of this regulation, and exceed the applicable smoke opacity limits as stated in Part B, V. of this regulation, and for which proper presentation of documented evidence, of expenditures for smoke emissions related adjustments and repairs have been made which equal or exceed minimum dollar expenditures as follows:
- I.D.7.a. For light-duty diesel vehicles (less than or equal to fourteen thousand pounds GVWR) a minimum expenditure of seven hundred and fifty dollars (\$750) must be made in an attempt to comply with smoke opacity standards.
- I.D.7.b. For heavy-duty diesel vehicles (greater than fourteen thousand pounds GVWR), a minimum expenditure of fifteen hundred dollars (\$1500) must be made in an attempt to comply with smoke opacity standards.
- I.D.7.c. Confirmation of documented evidence that minimum expenditures for smoke emissions related repairs have been made and issuance of a "Certification of Diesel Smoke Opacity Waiver" shall be made only by a Department of Revenue Air Environmental Systems Technician.
- I.D.7.d. Documented proof of smoke emissions repair costs for the specific failing vehicle shall be in the form of an itemized bill, invoice, work order, manifest, or statement, for the following types of work and/or parts:
- I.D.7.d.i. Replacements, adjustments and repairs to the diesel vehicle which are directly related to the reduction of exhaust smoke, necessary to comply with the applicable opacity standards.
- I.D.7.d.ii. Replacements, repairs and adjustments to the following systems shall qualify as emissions related repairs for the purpose of reducing exhaust smoke opacity:
- I.D.7.d.ii.A. Air intake systems



I.D.7.d.ii.B. Fuel system components, including fuel injection pumps, injectors and related components.

I.D.7.d.ii.C. Exhaust systems

I.D.7.d.ii.D. Turbochargers and superchargers, scavenging pumps (blowers) for two-stroke cycle engines

I.D.7.d.ii.F. Fuel control systems, utilized to control the air/fuel ratio, including microprocessor/electronic control systems, mechanical systems, hydraulic systems or pneumatic systems.

I.D.7.d.ii.G. Basic Engine Systems

I.D.7.d.iii. The expenditure for smoke reduction activities does not include the opacity inspection or reinspection fee(s) as specified in Section 42-4-408 (3) C.R.S., nor does the expenditure include the costs of replacement, adjustment, or repair of air pollution control equipment due to instances of neglect, maladjustment, abuse, tampering or disconnection.

I.D.7.d.iv. Air pollution control equipment is any part, assembly or system originally installed by the manufacturer for the sole or primary purpose of reducing emissions. Such equipment shall include, but is not limited to, the On-Board Diagnostic (OBD) system, exhaust aftertreatment devices, and exhaust gas recirculation (EGR) systems.

#### I.E. Fees for Diesel Opacity Inspections

##### I.E.1. Initial Opacity Inspection Fees

A licensed Diesel Opacity Inspection station shall charge a fee not to exceed the hourly shop rate for one hour as posted by the station pursuant to Part B, IV.A.4. of this regulation, for the inspection of any diesel-fueled motor vehicle required to be inspected pursuant to this regulation.

##### I.E.2. Reinspection Fees for Vehicles Failing Initial Opacity Inspection

If the vehicle fails the initial opacity inspection, the vehicle owner has 30 days in which to have repairs or adjustments made and return the vehicle to the licensed diesel inspection station which performed the initial inspection for one reinspection at a cost not exceeding the posted hourly shop rate for one hour.

##### I.E.3. Certificate of Emissions Control Fee

In order to encompass costs incurred by the Department of Revenue and the Department of Public Health and Environment in the administration, operation and evaluation of the diesel Opacity Inspection Program Certificate of Emissions Control (CEC) credits shall be sold to licensed diesel vehicle inspection stations for a cost of five dollars (\$5) each. Certificates of emissions control must be purchased from the agency designated by the Commission (AQCC). Licensed stations will be charged for the passing test records generated.

##### I.E.4. Home Rule Inclusion in the Diesel Opacity Inspection Program.

Any home rule city, town, or county shall, upon request by the governing body of such local government to the Department of Public Health and Environment and the Department of Revenue, be included in the Diesel Opacity Inspection Program. When such a request is made,

said departments and governing body shall agree to a start-up date for the Diesel Opacity Inspection Program in such areas. On or after such dates, all diesel-fueled motor vehicles which are registered in the area shall be inspected and required to comply with the provisions of this regulation, as if such area was in the Program area.

## **II. Test Equipment Requirements**

Standards and procedures for the operation, adjustment, calibration and certification of the Division-approved smoke opacity meters, chassis dynamometers, and other required equipment in the performance of diesel opacity inspections for the Diesel Opacity Inspection Program.

### **II.A. Approval of Required Test Equipment**

Diesel opacity inspection required by the Diesel Opacity Inspection Program shall not be performed unless the equipment used meets the specifications of the Colorado Diesel Opacity Inspection Program as defined in this regulation and as approved by the Division. Opacity meters, chassis dynamometers, photo tachometers and strip chart recorders must be approved by the Division. A manufacturer requesting the approval of an instrument for use in Colorado's Diesel Opacity Inspection Program shall make application thereof on forms provided thereby, and sources of vendors for the qualifying instruments may be obtained from the Program Administrator, Mobile Sources Section, Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 South Cherry Creek Drive, Denver, CO, 80246.

### **II.B. Running Changes and Equipment Updates**

Any changes to design or performance characteristics of components' specifications which may affect equipment or instrument performance must be approved by the Commission. It will be the instrument manufacturer's responsibility to confirm that such changes have no detrimental effect on opacity meter or other equipment or instrument performance. All equipment and instruments used in Colorado's Diesel Opacity Inspection Program will be updated as needed and specified in revisions to Commission Regulation Number 12.

### **II.C. Opacity Meter**

Every licensed station shall have on the premises an approved portable opacity meter meeting specifications to conduct opacity tests for the Diesel Opacity Inspection Program. Only opacity meters approved by the Division shall be used for opacity inspections in the Diesel Opacity Inspection program.

The opacity meter is to be portable in design and function with an emphasis on compactness and light weight. The instrument will consist of two major, separate components connected by an interconnecting cable. The major components are the stack monitor/sensor and the control/indicator unit.

#### **II.C.1. Opacity Meter Specifications**

##### **II.C.1.a. Stack Monitor/Sensor**

II.C.1.a.i. Must be adaptable by means of a quick connect device, to exhaust piping and outlets having outside diameters from two to six inches.

II.C.1.a.ii. Light Source: Light emitting diode (LED), pulsed green light.

II.C.1.a.iii. Light Detector: Silicon photo detector.

II.C.1.a.iv. Provide for in line continuous measurement of exhaust opacity.

#### II.C.1.b. Control/Indicator Unit

##### II.C.1.b.i. Meter Display

II.C.1.b.i.A. Range: 0-100 percent opacity

II.C.1.b.i.B. Accuracy

II.C.1.b.i.C. Digital read-out; Plus or minus two percent of full scale

II.C.1.b.i.D. Drift: Less than 2.5% per hour

II.C.1.b.i.E. Response time: Less than two seconds from 0-100% of scale

II.C.1.b.i.F. Peak Hold Feature

II.C.1.b.ii. Warm-up time: Not to exceed ten minutes

II.C.1.b.iii. Operating temperature range: 35°-120°F.

II.C.1.b.iv. Integrated with a chart recorder/digital recording device and/or provide for a linear 0-1 VDC OR 0-10 VDC output signal.

II.C.1.b.v. Power Requirements

II.C.1.b.v.A. 115 Volts AC input

II.C.1.b.v.B. Internal replaceable or rechargeable batteries allowing for operation independent of AC input.

II.C.1.b.vi. Connecting Cable

II.C.1.b.vi.A. Heat and abrasion resistant

II.C.1.b.vii. Calibration: Opacity meters must be calibration checked weekly. Calibration results must be entered into the inspection software provided by the Department or Division.

II.C.2. Opacity meters meeting all SAE J1667 specifications shall be considered equivalent to the above Division specification.

#### II.D. Dynamometer Specifications and Criteria

##### II.D.1. Light-duty Dynamometers

II.D.1.a. Capacity: A minimum requirement is the capacity to absorb up to 180 horsepower at speeds between 50 and 80 miles per hour (mph), capable of accommodating vehicles with individual axle loads up to 5,000 lbs.

II.D.1.b. Rolls: Minimum roll diameter is 8.5 inches.

II.D.1.c. Load and Speed Control

II.D.1.c.i. Infinitely variable throughout the load and speed range from no-load to full-load. Reference the dynamometer's "performance envelope" or power absorption capacity curve.

II.D.1.c.ii. Ability to set a load or speed and until deactivated, maintain that preset setting without additional input from the load controller.

II.D.1.d. Instrumentation: Interfaced, calibrated horsepower and road speed indicators located in such a manner to be readily visible and discernible by the operator of the vehicle under test.

II.D.1.e. Calibration:

II.D.1.e.i. Provision for field checking the accuracy of the dynamometer's calibration including the electrical output signal, interface and attendant instrumentation.

II.D.1.e.ii. Availability of manufacturer's recommended/ specified equipment, tools and procedures for the field calibration and adjustment of the dynamometer.

## II.D.2. Heavy-duty Dynamometers

II.D.2.a. Capacity: A minimum requirement is the capability to absorb a minimum of 400 horsepower at speeds between 50 and 80 mph. Capable of accommodating vehicles with individual axle loads up to 22,000 lbs.

II.D.2.b. Rolls:

II.D.2.b.i. Minimum roll diameter: 8.5 in.

II.D.2.b.ii. Tandem axle capability to accommodate, at a minimum, vehicle inter-axle spacing of 48 to 58 inches.

II.D.2.c. Load and Speed Control:

II.D.2.c.i. Infinitely variable throughout the load and speed range from no-load to full-load. Reference the dynamometer's "performance envelope" or power absorption capacity curve.

II.D.2.c.ii. Ability to set a load or speed and until deactivated, maintain that preset setting without additional input from the load controller.

II.D.2.d. Instrumentation: Interfaced, calibrated horsepower and road speed indicators located in such a manner to be readily readable and discernible by the operator of the vehicle under test.

II.D.2.e. Calibration:

II.D.2.e.i. Provision for field checking the accuracy of the dynamometer's calibration including the electrical output signal, interface and attendant instrumentation.

- II.D.2.e.ii. Availability of manufacturer's recommended/ specified equipment, tools, and procedures for the field calibration and adjustment of dynamometer.

## II.E. Other Required Equipment for Diesel Opacity Inspection Stations.

### II.E.1. Photo tachometer (Heavy-Duty Vehicle Inspection Stations Only)

Every heavy-duty diesel vehicle inspection station shall have a photo tachometer capable of sensing a vehicle's engine rpm and digitally displaying that rpm in the vehicle operator's compartment. This tachometer must be capable of measuring rpm from 0-6000 rpm with an accuracy of plus or minus five rpm or better. For heavy-duty on-road testing stations this unit must be of portable design with the readout capable of being read from the vehicle's cab, and must be easily interfaced with the strip chart recorder.

### II.E.2. Stripchart Recorders/Digital Recording Devices (Heavy-duty On-Road Inspection Stations Only)

In those instances where on-road opacity testing will be utilized, stripchart recorders/digital recording devices shall be used in order to accurately monitor and analyze the test sequence.

Description of an approved stripchart recorder/digital recording device is as follows:

- II.E.2.a. Recorder capable of accurately recording data in a moving heavy-duty vehicle.

- II.E.2.b. Unit is to be powered by internal batteries (rechargeable or non-rechargeable) or 12 VDC external sources. A 115 VAC, 60 Hz, unit powered by means of a DC/AC inverter is also acceptable.

- II.E.2.c. A minimum of two channels for recording 1) exhaust opacity and, 2) engine speed (rpm).

- II.E.2.d. A recorder chart/display speed of approximately four to eight inches/min. (10 to 20 cm/min).

- II.E.2.e. A minimum chart paper/display width of three inches.

### II.E.3. Certified Neutral Density Filters.

Two neutral density filters, certified and calibrated by the Division, must be kept by each diesel testing station for weekly calibration checks of the opacity meter. The results of the calibration checks of each approved opacity meter must be entered into the inspection software provided by the Division and made available to Department of Revenue Air Environmental Systems Technicians upon request during station inspections.

### II.E.4. Certified Thermometer

For use in the Diesel Opacity Inspection Program, the thermometer must be a laboratory grade ambient temperature measuring device with a range of at least 20°F (twenty degrees) through 120°F (one-hundred-twenty degrees) and an attested accuracy of at least plus or minus 1° (one degree) Fahrenheit with increments of one degree, with protective shielding, and approved by the Department of Revenue.

### II.E.5. Safety Restraint Equipment

Adequate safety restraint equipment for all dynamometer test stations is required. Restraint equipment must be capable of restraining the type of vehicles tested at that station. Equipment may be chains, fabric tie-down straps, wheel chocks, as appropriate and as approved upon licensing.

II.E.6. Hearing ear protectors, as needed.

II.E.7. Auxiliary engine cooling fan.

Light-duty inspection stations are required to have available on premises and for use during opacity inspections, an auxiliary engine cooling fan which meets the following minimum specifications:

Guarded fan complying with OSHA regulations.

CFM free air delivery of 3200 CFM

Fan diameter of 24 inches.

¼ H.P. motor.

II.E.8. Exhaust gas removal equipment.

If a closed exhaust system is utilized, the pressure within the system shall be maintained between 4 inches H<sub>2</sub>O positive pressure and 2 inches H<sub>2</sub>O negative pressure at all times when any given vehicle is undergoing opacity testing.

II.E.9. Required reference materials, including a Division-approved current emissions control systems application guide.

II.E.10. Basic hand tools necessary to perform inspection.

### **III. Procedures and Practices to Ensure the Proper Performance of Opacity Inspections**

#### **III.A. General Inspection Requirements**

III.A.1. All aspects of the inspection must be performed by a licensed diesel emissions inspector. It is the responsibility of the inspector to notify the Department of Revenue of his/her current place of employment.

III.A.2. The inspection shall take place at the address of the station license.

III.A.3. The temperature of the inspection area (or ambient temperature for on-road tests) shall be between 35°F and 110°F (2°C and 43°C) during the inspection. Temperatures during the inspection must be accurately recorded and monitored in a well-ventilated location, away from vehicle engine and exhaust heat sources and out of direct sunlight.

III.A.4. For 1991 and later model year diesel vehicles, the diesel emissions inspector shall perform an inspection for the integrity of the emissions control systems and/or devices as listed on the vehicle's emissions control label or in an emissions control systems application guide. The following system/devices if original equipment manufacturer supplied must be installed, intact and apparently operational:

III.A.4.a. Any fuel injection pump seals and covers.

III.A.4.b. Fuel control systems, utilized to control the air/fuel ratio, including microprocessor/electronic control systems, mechanical systems, hydraulic systems or pneumatic systems.

III.A.4.c. Exhaust aftertreatment device systems.

III.A.4.d. Engine computer controls, related sensors, actuators, malfunction indicator, or service maintenance reminder lights. Engine computer control hardware and software must be original equipment, or must be certified by the aftermarket parts manufacturer in writing with words to the effect of: "Required testing has been performed and the manufacturer warrants that this part will not adversely affect emissions performance." Aftermarket emissions control components must be engineered and built to fit the specific vehicle application.

III.A.4.e. Positive crankcase ventilation, crankcase depression and air box drain equipment, including their hoses, pipes, valves and connectors.

III.A.4.f. The exhaust gas recirculation valve and related coolers, piping and control systems.

III.A.4.g. Related hoses, connectors, brackets, and hardware for these components.

III.A.4.h. Any other emissions-related components for a particular vehicle/engine as listed on a vehicle evaluation form (DR2365) issued by Emissions Technical Center staff.

III.A.4.i. The vehicle shall fail the inspection if the emission control components are found to be tampered, defective, or otherwise rendered partially or completely inoperative. When determining original equipment emissions control systems/devices, the vehicle's under-the-hood emissions control label takes precedence over any other sources of information. Any aftermarket replacement devices and software must be certified by the aftermarket parts manufacturer in writing with words to the effect of: "Required testing has been performed and the manufacturer warrants that this part will not adversely affect emissions performance." Aftermarket emissions control components must be engineered and built to fit the specific vehicle application.

It is the vehicle owner's responsibility to prove the acceptability of aftermarket devices/software, by producing the device/software manufacturer's statement warranting against adversely affecting emissions performance and the applicability of that device/software for the specific vehicle application. In the case where the manufacturer's certification is called to question or is missing, the Division may determine the acceptability of an aftermarket device/software.

### III.B. Inspection Procedure for Light-Duty Diesel Vehicles (fourteen thousand pounds GVWR and less)

#### III.B.1. Preliminary Check of Vehicle

III.B.1.a. Safety check vehicle (tires, drive-line, etc.)

III.B.1.b. Ensure engine lube oil and coolant levels are at proper levels.

III.B.1.c. For vehicles with multiple exhaust outlets, operate engine, observe and determine which emits the heavier exhaust smoke. During testing, monitor the

exhaust outlet which emits the heavier smoke, if there is a difference in smoke levels.

### III.B.2. Diesel Vehicle Inspection Report Forms (DVIR)

III.B.2.a. The opacity inspector shall accurately identify and enter vehicle and owner information from vehicle to be tested as required on the DVIR.

### III.B.3. Prepare Vehicle for Opacity Testing

III.B.3.a. Locate vehicle on dynamometer.

III.B.3.b. Secure vehicle with adequate safety restraints such as chains, nylon straps, wheel chocks or tie downs.

III.B.3.c. Locate auxiliary engine cooling fan in front of vehicle radiator or engine cooling inlet, whichever is applicable.

III.B.3.d. Vehicle is to be at a stabilized normal operating temperature. This shall be determined by feeling the top radiator hose, by checking the temperature gauge, and/or operating the vehicle prior to performing the inspection.

III.B.3.e. Zero/span opacity meter following manufacturer's specifications. Clean and recalibrate as necessary before conducting test.

III.B.3.f. Attach pre-calibrated opacity meter to vehicle's exhaust outlet and calibrate meter according to the manufacturer's instructions.

### III.B.4. Opacity Testing

Opacity testing of light-duty diesel vehicles involves a dynamometer loaded-mode lug-down test procedure.

Engine temperature and oil pressure are to be closely monitored during all testing. Testing is to be discontinued if engine and vehicle operating parameters are not within acceptable limits.

#### III.B.4.a. Dynamometer Test Procedure

III.B.4.a.i. Verify smoke opacity meter is set at zero. Start and operate engine at idle rpm. With the dynamometer in an unloaded mode/condition and the vehicle in direct or drive gear (do not use overdrive), slowly increase vehicle speed to 60 mph (plus or minus two mph). Continue to maintain (by manual or automatic control) 60 mph while slowly increasing dynamometer loading until maximum horsepower (hp) is developed at 60 mph. Maintain this wide open throttle speed/load condition for a minimum of 10 seconds (plus or minus four seconds) and record mph, opacity, and hp on Opacity Worksheet. Proceed directly to Step 4.a.iii.

III.B.4.a.ii. NOTE: Vehicles with automatic transmissions are allowed two downshifts to the next lower gear at any point during the dynamometer lugdown test. If a downshift occurs, continue with the test.

III.B.4.a.iii. While maintaining wide open throttle; slowly increase the dynamometer loading until a vehicle speed of 50 mph (plus or minus two



mph) is achieved. Maintain this wide open throttle speed/load condition for a minimum of 10 seconds (plus or minus four seconds) and record mph, opacity, and hp on Opacity Worksheet. Proceed directly to Step 4.a.iv.

III.B.4.a.iv. While maintaining wide open throttle; slowly increase the dynamometer loading until a vehicle speed of 40 mph (plus or minus two mph) is achieved. Maintain this wide open throttle speed/load condition for a minimum of ten seconds (plus or minus four seconds) and record mph, opacity, and horsepower.

III.B.4.a.v. Slowly remove dynamometer loading while returning engine to idle. Shut down engine after observing cool down procedure. Note and record residual opacity meter reading on Opacity Worksheet.

III.B.4.a.vi. The inspector shall refer to the opacity standards in Part B, V. of this regulation.

III.B.4.a.vi.A. If the highest opacity reading taken from Steps 4.a.i. through 4.a.iv. exceeds the opacity standard and the opacity meter shift exceeds five percent (5%), clean the lenses, zero meter and repeat the dynamometer test procedure starting at Step 4.a.i. At least one additional test will be conducted at no cost to the motorist.

III.B.4.a.vi.B. If the highest opacity reading taken from Steps 4.a.i. through 4.a.iv. exceeds the opacity standard and the opacity meter zero shift is less than five percent (5%), the vehicle fails the inspection.

III.B.4.a.vii. The inspector shall then enter the highest opacity reading, the opacity meter zero shift, the pass/fail determination, provide an electronic signature and other required information on the DVIR media. Vehicles which comply with the inspection procedures and applicable opacity standards shall be issued a completed CEC.

### III.B.5. Vehicle Removal from Dynamometer

III.B.5.a. Detach all test equipment, restraints and remove them from the vehicle.

III.B.5.b. Remove vehicle from dynamometer

### III.C. Dynamometer Inspection Procedures for Heavy-Duty Diesel Vehicles (Greater than fourteen thousand pounds GVWR.)

#### III.C.1. Preliminary Check of Vehicle

III.C.1.a. Safety check vehicle (tires, drive-line, etc.)

III.C.1.b. Ensure engine lube oil and coolant levels are at proper levels.

III.C.1.c. Verify proper operation of vehicle tachometer, or mount and connect approved photo tachometer.

- III.C.1.d. For vehicles with multiple exhaust outlets, operate engine, observe and determine which outlet emits the heavier exhaust smoke, if there is a difference. During testing, monitor the exhaust outlet which emits the heavier smoke.

### III.C.2. Diesel Vehicle Inspection Reports (DVIR)

- III.C.2.a. The opacity inspector shall accurately identify and enter vehicle and owner information from vehicle being tested as required on the DVIR.
- III.C.2.b. Determine the engine's rated horsepower and attendant rpm and enter on DVIR and also on the opacity worksheet

### III.C.3. Prepare Vehicle for Opacity Testing

- III.C.3.a. Locate vehicle on dynamometer.
- III.C.3.b. Secure vehicle with adequate safety restraints such as chains, nylon straps, wheel chocks or tie downs.
- III.C.3.c. Vehicle is to be at a stabilized operating temperature. This shall be determined by feeling the top radiator hose, by checking the temperature gauge, and/or by operating the vehicle prior to performing the inspection.
- III.C.3.d. Zero/span opacity meter, following manufacturer's specifications. Clean and recalibrate, as necessary, before conducting test.
- III.C.3.e. Attach pre-calibrated opacity meter to vehicle's exhaust outlet and calibrate meter according to the manufacturer's instructions.

### III.C.4. Opacity Testing

Dynamometer opacity testing of heavy-duty diesel vehicles involves two separate and distinct test procedures. The two tests are 1) a snap/free no-load acceleration test and 2) a dynamometer loaded-mode lug-down test procedure.

Engine temperature and oil pressure are to be closely monitored during all testing. Testing is to be discontinued if engine and vehicle operating parameters are not within acceptable limits.

NOTE: If the vehicle is equipped with a temperature regulated radiator shutter or modulating fan and its operation is erratic, unstable or questionable, secure the shutter in the open position for the duration of the opacity test.

#### III.C.4.a. Snap/Free Acceleration Test Procedure

This procedure requires a rapid Wide Open Throttle (WOT) no-load acceleration of the engine from low idle to maximum governed no-load rpm with the transmission in neutral

- III.C.4.a.i. Verify the zero setting of the opacity meter. Start and operate the engine at idle rpm.
- III.C.4.a.ii. With the transmission in neutral and the engine at idle rpm, slowly accelerate the engine allowing the engine to reach its maximum stabilized governed speed. Allow the engine to return to idle.
- III.C.4.a.iii. Place the opacity meter in the peak hold position.

III.C.4.a.iv. Perform the acceleration procedure as in Step 4.a.ii., but rapidly accelerate the engine. Record on the opacity worksheet the highest or peak smoke opacity reading attained during the procedure.

III.C.4.a.v. Return the engine to idle rpm and shut down engine.

III.C.4.a.vi. Return opacity meter to normal mode (peak hold off) and note zero shift (deviation) reading. Record the peak opacity value obtained in Step 4.a.iv. and the meter zero shift on the DVIR, and proceed to the dynamometer test procedure.

#### III.C.4.b. Dynamometer Test Procedure

III.C.4.b.i. Verify smoke opacity meter is set at zero. Start and operate engine at idle rpm. With the dynamometer in an unloaded mode/condition, select a gear which will allow the vehicle to attain and maintain a no-load vehicle speed of 60 to 70 miles per hour (mph) at wide open throttle (WOT). It is preferred and recommended that vehicle be operated at the lower end of this mph range whenever possible. If vehicle has a maximum road speed that is less than 60 mph, operate vehicle at the highest mph possible. Upon stabilization, maintain speed for at least ten seconds (plus or minus four seconds) and record engine rpm and mph on opacity worksheet.

III.C.4.b.ii. While maintaining wide open throttle (WOT), slowly increase the dynamometer loading until engine rated rpm (plus or minus 15 rpm) is obtained. Maintain this speed/load for at least ten seconds (plus or minus four seconds) and record the following information: engine rpm, smoke opacity, and horsepower.

III.C.4.b.iii. Maintain wide open throttle (WOT) and slowly increase dynamometer loading until engine is at 90% of rated rpm (plus or minus 15 rpm). Maintain this speed/load for at least ten seconds (plus or minus four seconds) and record data on opacity worksheet; engine rpm, smoke opacity, and hp.

III.C.4.b.iv. Maintain wide open throttle (WOT) and slowly increase dynamometer loading until engine is at 80% of rated rpm (plus or minus 15 rpm). Maintain this speed/load for at least ten seconds (plus or minus four seconds) and record data on opacity worksheet; engine rpm, smoke opacity, and hp.

III.C.4.b.v. Maintain wide open throttle (WOT) and slowly increase dynamometer loading until engine is at 70% of rated rpm (plus or minus 15 rpm). Maintain this speed/load for at least ten seconds (plus or minus four seconds) and record data on opacity worksheet; engine rpm, smoke opacity, and hp. This step concludes the engine loading procedure; do not apply additional loading under any circumstances.

III C.4.b.vi. Note: Vehicles with automatic transmissions are allowed two downshifts to the next lower gear at any point during the dynamometer lugdown test. If a downshift occurs, continue with the test.

III.C.4.b.vii. Slowly remove dynamometer loading while returning engine to idle. Shut down engine after observing cool down procedure. Note and record residual opacity meter reading on Opacity Worksheet.

III.C.4.b.viii. The inspector shall refer to the opacity standards in Part B, V. of this regulation.

III.C.4.b.viii.A. If the highest opacity reading taken from Steps 4.b.ii. through 4.b.v. exceeds the opacity standard and the opacity meter zero shift exceeds five percent (5%), clean the lenses, zero meter and repeat the dynamometer test procedure starting at Step 4.B.I. At least one additional test will be conducted at no cost to the motorist.

III.C.4.b.viii.B. If the highest opacity reading taken from Steps 4.b.ii. through 4.b.v. exceeds the opacity standard and the opacity meter zero shift is less than five percent (5%), the vehicle fails the inspection.

III.C.4.b.viii.C. If neither the highest opacity meter reading taken in steps (ii) through (v) nor the opacity meter zero shift exceeds the opacity standard, the vehicle passes the inspection.

III.C.4.b.ix. The inspector shall then enter the highest opacity reading, the opacity meter zero shift, the pass/fail determination, provide an electronic signature, and other required information on the DVIR. Vehicles which comply with the inspection procedures and applicable opacity standards shall be issued a completed CEC.

III.C.4.c. Vehicle Removal from Dynamometer

III.C.4.c.i. Detach all test equipment, restraints and remove them from the vehicle.

III.C.4.c.ii. If the vehicle is equipped with a radiator shutter or modulating fan which has been secured in the open position prior to testing, restore unit to normal operation.

III.C.4.c.iii. Remove vehicle from dynamometer.

III.D. On-Road Inspection Procedures for Heavy-Duty Diesel Vehicles (Greater than fourteen thousand pounds GVWR)

III.D.1. Test Site Requirements and Conditions

In addition to the prescribed test equipment and other requirements, as set forth by this regulation, a test site will only be considered adequate for on-road opacity testing when there is:

III.D.1.a. Approximately three-hundred (300) yards of sound, smooth, paved test lane in a safe, uncongested area on private property (non-public roads).

III.D.1.b. An ambient temperature between 35°F and 110°F (2°C and 43°C) during any given vehicle test procedure.

III.D.1.c. An opacity inspector licensed by the Department of Revenue and in possession of a valid opacity inspector license.

III.D.1.d. A driver, knowledgeable in the operation of the vehicle to be tested and in possession of a valid operator's license relative to that vehicle. (Refer to Part B, IV.B.3)

### III.D.2. Vehicle Preparation

Prior to proceeding with the actual opacity testing of the vehicle, the following guidelines must be followed:

III.D.2.a. Verify that the vehicle to be tested meets the program definition of a heavy-duty vehicle (Greater than fourteen thousand pounds GVWR).

III.D.2.b. Vehicle is to be equipped with a speedometer in good working order.

III.D.2.c. Perform a safety inspection of the vehicle's brakes, tires and driveline for defects or unsafe conditions.

III.D.2.d. Enter the requested vehicle/owner information on the Diesel Vehicle Inspection Report (DVIR).

III.D.2.e. Determine the engine's rated horsepower and attendant rpm and enter on DVIR and also on the opacity worksheet.

III.D.2.f. Securely mount the test/reference tachometer and interface it with the approved strip chart recorder which is to be located in the vehicle's cab. Ensure that all wires and cables do not pose any potential safety hazards.

III.D.2.g. Securely attach the approved/registered opacity meter to the vehicle's exhaust piping. If a full-flow opacity meter is to be used, ensure that the optical pickup head is attached in such a manner that the opacity meter's emitter and detector light path is perpendicular to the vehicle's direction of travel and is centered approximately 5" plus or minus 1" from the exhaust outlet. Interface the meter with the strip chart recorder. Follow the calibration procedures prescribed by the equipment manufacturers.

### III.D.3. Test Procedures

The on-road opacity testing of heavy-duty diesel vehicles involves two separate and distinct test procedures. The two tests are 1) a snap/free no-load-mode acceleration test and, 2) either an on-road load-mode acceleration test or an on-road loaded-mode brake lug-down test.

#### III.D.3.a. Snap/Free Acceleration Test Procedure

This procedure requires a rapid Wide Open Throttle (WOT) no-load acceleration of the engine from low idle to maximum governed no-load rpm with the transmissions in neutral.

III.D.3.a.i. Verify the zero settings of the opacity meter and chart recorder. Start and operate the engine at idle rpm.

III.D.3.a.ii. With the transmission in neutral and the engine at idle rpm, slowly accelerate the engine allowing the engine to reach its maximum stabilized no-load governed speed. Allow the engine to return to idle.

- III.D.3.a.iii. Place the opacity meter in the peak hold position.
- III.D.3.a.iv. Perform the acceleration procedure as in Step 3.a.ii., but rapidly accelerate the engine. Record on the opacity worksheet the highest or peak smoke opacity reading attained during the procedure.
- III.D.3.a.v. Return the engine to idle rpm and shutdown engine.
- III.D.3.a.vi. Return opacity meter to normal mode (peak hold off) and note zero shift (deviation) reading. Record the peak opacity value obtained in Step 3.a.iv. and the meter zero shift on the DVIR, and proceed to the on-road test; either acceleration or lugdown procedure, as applicable.

#### III.D.3.b. On-Road Acceleration Opacity Test Procedure

- III.D.3.b.i. Verify smoke opacity meter and chart recorder/digital recording device are set at zero. Start and operate engine at idle rpm.

Select a gear which will permit the vehicle to accelerate under WOT from a moving position (approximately 900 to 1000 engine rpm) up to maximum engine rpm in no less than seven seconds. This step is vital in order to ensure that the engine will be operated in an rpm range and time frame which will allow sufficient time and engine loading in order to accurately monitor the vehicle's smoke opacity levels.

- III.D.3.b.ii. Bring the vehicle to a stop and shutdown the engine. Verify the zero settings of the opacity meter and the strip chart recorder. Clean the monitoring unit as necessary.
- III.D.3.b.iii. With the transmission in the selected gear (as described in Step 3.b.i.) and the strip chart recorder in record mode, accelerate the vehicle under WOT from a road speed equivalent of 900 to 1000 engine rpm up to maximum engine rpm. Maintain maximum rpm for a few seconds in order to allow for stabilized conditions.
- III.D.3.b.iv. Bring the vehicle to a safe controlled stop, shut down engine and discontinue the recording. Note and record on the opacity worksheet, 1) the highest opacity reading observed between maximum engine rpm and 70 percent (70%) rated rpm and, 2) the opacity meter/chart recorder zero shift (deviation) reading.
- III.D.3.b.v. The inspector shall refer to the opacity standards in Part B, V. of this regulation.
- III.D.3.b.vi. If the highest recorded opacity taken from Step 3.b.iii. through 3.b.iv. exceeds the opacity standard and the opacity meter/chart recorder zero shift (deviation) exceeds five percent (5%), clean the lenses, zero meter and repeat the acceleration test procedure starting at Step 3.b.iii. At least one additional test will be conducted at no cost to the motorist.
  - III.D.3.b.vi.A. If the highest opacity reading taken from Steps 3.b.iii. through 3.b.iv. exceeds the opacity standard over the required time period, with five percent (5%) or less zero shift, the vehicle fails the inspection.

III.D.3.b.vi.B. If neither the highest opacity meter reading taken in Steps 3.b.iii. through 3.b.vi. nor the zero shift exceeds the opacity standard, the vehicle passes the inspection and the inspector shall proceed directly to Step 3.b.xi..

III.D.3.b.vi.C. If the highest opacity meter reading exceeds the opacity standard with five percent (5%) or less zero shift, but for less than the required time period, the vehicle will require additional testing as follows.

III.D.3.b.vii. Verify the zero settings of the opacity meter and strip chart recorder. Clean the monitoring unit as necessary.

III.D.3.b.viii. Accelerate the vehicle as in Step 3.b.iii., however, the vehicle's acceleration must be temporarily restrained ( $10 \pm 4$  seconds) at that rpm point in the procedure where the highest opacity reading was observed. Decreased throttle is not to be used to slow the vehicle's rate of acceleration. The vehicle's service brakes should be utilized for that purpose. Opacity and rpm must be accurately recorded at this time.

III.D.3.b.ix. Bring the vehicle to a safe controlled stop, shut down engine, and discontinue the recording. Note the highest opacity meter reading and the opacity meter/chart recorder zero shift.

III.D.3.b.x. If the highest opacity meter reading taken from Steps 3.b.viii. and 3.b.ix. exceeds the opacity standard and the opacity meter/chart recorder zero shift (deviation) exceeds five percent (5%), clean the lenses, zero meter and repeat the acceleration test procedure starting at Step 3.b.viii.

III.D.3.b.x.A. If the highest opacity reading taken from Steps 3.b.viii. through 3.b.ix. exceeds the opacity standard over the required time period, with five percent (5%) or less zero shift, the vehicle fails the inspection.

III.D.3.b.x.B. If neither the highest opacity meter reading taken in Steps 3.b.viii. through 3.b.ix. nor the opacity meter zero shift exceeds the opacity standard, the vehicle passes the inspection.

III.D.3.b.xi. The inspector shall then enter the highest opacity reading, the opacity meter/chart recorder zero shift, the pass/fail determination, provide an electronic signature, and other required information on the DVIR. Vehicles which comply with the inspection procedures and applicable opacity standards shall be issued a completed CEC.

### III.D.3.c. On-Road Brake Lug-Down Test Procedure

III.D.3.c.i. Verify smoke opacity meter and chart recorder are set at zero. Start and operate engine at idle rpm.

III.D.3.c.ii. Select a gear which will permit the vehicle to attain a road speed of 15 to 25 mph with the engine at maximum rpm, wide open throttle (WOT). Due to the many variables, this gear selection process is basically a trial and error effort. Bring the vehicle to a stop and shut-down the engine.

- III.D.3.c.iii. Verify the zero settings of the opacity meter and strip chart recorder. Clean the monitoring unit as necessary.
- III.D.3.c.iv. With the vehicle operating at WOT in the selected gear as described in Step 3.c.ii. and the chart recorder in record mode, maintain WOT and slowly begin loading the engine by means of the vehicle's service brakes. The loading is to be applied linearly throughout an engine rpm range which extends from maximum engine rpm down to 70 percent of the engine's rated rpm in a time span which encompasses no less than ten seconds.
- III.D.3.c.v. Note: Vehicles with automatic transmissions are allowed two downshifts to the next lower gear at any point during the brake lug-down test. If a downshift occurs, continue with the test.
- III.D.3.c.vi. Bring the vehicle to a safe controlled stop, shut down engine and discontinue the recording. Note and record 1) the highest opacity reading observed between maximum engine rpm and 70% rated rpm and, 2) the opacity meter/chart recording zero shift (deviation) reading.
- III.D.3.c.vii. The inspector shall refer to the Opacity Standards in Part B, V. of this regulation.
- III.D.3.c.viii. If the highest opacity meter reading taken from Steps 3.c.iv. through 3.c.vi. exceeds the opacity standard and the opacity meter/chart recorder zero shift exceeds five percent (5%), clean the lenses, zero meter and repeat the brake lugdown test procedure starting at Step 3.c.iv. At least one additional test will be conducted at no cost to the motorist.
- III.D.3.c.viii.A. If the highest opacity meter reading taken from Steps 3.c.iv. through 3.c.vi. Exceeds the opacity standard over the required time period with five percent (5%) or less zero shift, the vehicle fails the inspection.
- III.D.3.c.viii.B. If neither the highest opacity meter reading taken in Steps 3.c.iv. through 3.c.vi. nor the opacity meter zero shift exceeds the opacity standard, the vehicle passes the inspection and the inspector shall proceed directly to Step 3.c.xiii.
- III.D.3.c.viii.C. If the highest opacity meter reading exceeds the opacity standard with five percent (5%) or less zero shift but for less than the required time period, the vehicle will require additional testing as follows.
- III.D.3.c.ix. Verify the zero settings of the opacity meter and chart recorder, clean the monitoring unit as necessary.
- III.D.3.c.x. Again, operate the vehicle as in Step 3.c.iv.; however restrain the vehicle for ten, plus or minus four, seconds ( $10 \pm 4$  seconds) by means of the vehicle's service brakes at the rpm point in the procedure where the highest opacity reading was observed.



III.D.3.c.xi. Bring the vehicle to a safe controlled stop, shut down engine and discontinue the recording. Note the highest opacity meter reading and the opacity meter/chart recorder zero shift.

III.D.3.c.xii. If the highest opacity meter reading taken from Steps 3.c.x. and 3.c.xi. exceeds the opacity standard and the opacity meter/chart recorder zero shift exceeds five percent (5%), clean the lenses, zero meter and repeat the brake lugdown test procedure starting at Step 3.c.x.

III.D.3.c.xii.A. If the highest opacity meter reading taken from Steps 3.c.x. and 3.c.xi. exceeds the opacity standard over the required time period with five percent (5%) or less zero shift, the vehicle fails the inspection.

III.D.3.c.xii.B. If neither the highest opacity meter reading taken in Steps 3.c.x. through 3.c.xi. nor the zero shift exceeds the opacity standard, the vehicle passes the inspection.

III.D.3.c.xiii. The inspector shall then enter the highest opacity reading, the opacity meter/chart recorder zero shift, the pass/fail determination, provide an electronic signature, and other required information on the DVIR. Vehicles which comply with the inspection procedures and applicable opacity standards shall be issued a completed CEC.

III.E. The Division has the authority to determine the applicability of this regulation for unique testing situations not specifically addressed in this regulation.

#### **IV. Qualification of Inspection Stations and Testing and Licensing of Diesel Opacity Inspectors**

##### **IV.A. Requirements for Licensing of a Diesel Opacity Inspection Station**

IV.A.1. The following equipment and tools shall be available at Diesel Opacity Inspection Stations for performance of diesel opacity inspections:

IV.A.1.a. Smoke opacity meter (see Part B, II.C.) in proper calibration according to the manufacturer's guidelines.

IV.A.1.b. Chassis dynamometer (see Part B, II.D.). Not required for Heavy-Duty On-Road Test Stations.

IV.A.1.c. Photo tachometer (See Part B, II.E.1.).

IV.A.1.d. Strip Chart Recorder (See Part B, II.E.2.). Heavy-duty on-road test stations only.

IV.A.1.e. Neutral density filter for calibration check of opacity meter. (See Part B, II.E.3.).

IV.A.1.f. Manufacturer's operation, maintenance and calibration manuals for opacity meters and dynamometers must be retained in the inspection area.

IV.A.1.g. Certified thermometer, as described in Part B, II.E.4.

IV.A.1.h. Safety restraint equipment, as described in Part B, II.E.5.

IV.A.1.i. Hearing (ear) protection.

IV. A.1.j. Engine cooling fan. Required for light-duty inspection stations only.

IV.A.1.k. Exhaust removal equipment.

IV.A.1.l. Reference materials as required by licensing.

IV.A.1.m. Basic hand tools necessary to perform inspection.

IV.A.1.n. An internet-connected device for inspection data entry and data transfer, as approved by the Division

IV.A.2. The station must be a permanent location which meets all applicable zoning requirements to provide for the inspection of diesel vehicles, as licensed, and as defined in this regulation.

IV.A.3. A licensed diesel emissions inspector is employed and is available to make a proper inspection during all hours the station is open for business.

IV.A.4. All Diesel Opacity Inspection stations are required to post in a conspicuous location in a clearly legible fashion a sign indicating the fees charged for the initial inspection and first reinspection. Such fees shall not exceed the posted hourly shop rate for one hour. Inspection personnel shall notify diesel vehicle owners of the fee prior to performing any test procedure.

IV.A.5. Additional requirements for Heavy-duty On-Road Testing Stations

IV.A.5.a. Approximately three-hundred (300) yard of sound, smooth paved test lane in a safe, uncongested area, on private property (non-public roads).

IV.A.5.b. A driver knowledgeable in the operation of the vehicle to be tested and in possession of a valid operator's license relative to that vehicle.

IV.A.6. The Division may perform station equipment and inspector performance audits.

IV.B. Training, Testing and Licensing of Applicants for Diesel Opacity Inspectors

IV.B.1. Certificates of Qualification for Diesel Opacity Inspectors

IV.B.1.a. Applications for Certificates of Qualification for diesel opacity inspectors shall be filed with the Air Pollution Control Division, Colorado Department of Public Health and Environment, 2450 West Second Avenue, Denver, CO 80223, and the issuance of Certificates of Qualification shall be administered by the Division. Applications for such Certificates of Qualification shall be completed on forms provided by the Division. Before an applicant may be given a Certificate of Qualification, he must comply with the requirements of this section. The Division will notify applicants of the evaluation requirements prior to testing.

IV.B.1.b. The Division shall develop a training program for diesel opacity inspectors. The training program shall be comprehensive in nature and address all aspects of diesel vehicle inspection procedures. Participation by diesel opacity inspectors in this training is required to receive a Certificate of Qualification.

- IV.B.2. An applicant must demonstrate knowledge, skill, and competence concerning the conduct of diesel opacity inspections. Such knowledge, skill and competence will be shown by passing a qualification test including, but not limited to, knowledge of the following:
- IV.B.2.a. Knowledge of rules and regulations of Diesel Opacity Inspection Program procedures.
  - IV.B.2.b. Visual inspection procedures of the required emissions control equipment for 1991 and newer vehicles.
  - IV.B.2.c. Operation of and proper use, care, maintenance and calibration of the Commission – approved opacity meters, chassis dynamometers, photo tachometers and strip chart recorders.
  - IV.B.2.d. Proper use of and distribution of DVIR, Certificates of Emissions Control, opacity worksheets and supplemental documents.
  - IV.B.2.e. Waiver requirements for all diesel vehicles failing the initial emissions inspection.
- IV.B.3. For on-road heavy-duty diesel inspector licenses only, the applicant must possess a valid Colorado Class A operator's license.
- IV.B.4. The Division shall issue a Certificate of Qualification to an applicant upon successful completion of the requirements of this section.
- IV.B.5. **Requalification Requirements for all Diesel Opacity Inspectors**
- IV.B.5.a. Upon the determination by the Commission of the necessity of technically updating the qualifications for diesel opacity inspectors and, upon development or approval of retraining courses and retesting requirements for diesel opacity inspectors to demonstrate said qualifications, diesel opacity inspectors, or holders of certificates of qualification shall be required to requalify. Participation by requalifying diesel opacity inspectors in this training is required to receive a Certificate of Qualification.
  - IV.B.5.b. Diesel Opacity Inspectors shall be required to requalify within ninety (90) days from the date of written notification by the Division. Said notice shall be mailed to the address of record in the office of the Department of Revenue (Department) charged with licensing of diesel opacity inspectors which notice shall inform the person of the necessity of requalification and the nature of such skills, systems, and procedures requiring the retraining for the continued performance of the opacity inspection. The notice shall give the name and location of training sources approved or accredited for purposes of retraining, the necessity of requalification by a certain date, and the nature and evidence of documentation to be filed with the Division evidencing such requalification, and state that failure to requalify within said period of time shall result in suspension or revocation of the diesel opacity inspector's license or certification as described in the Department's rules and regulations.
  - IV.B.5.c. The Division shall issue a Certificate of Requalification to any person who has requalified to the satisfaction of the Division and according to the requalification regulation of the Department.

#### IV.B.6. Transmittal of Certificates and Issuance of Diesel Opacity Inspector's Licenses

The Division shall provide a duplicate copy of any Certificate of Qualification to the opacity inspector authority of the Department of Revenue, and, upon application by any person so certified or recertified, the Department shall issue a diesel opacity inspectors license in accord with the regulations of that department.

#### IV.B.7. Lapse of Certificate of Qualification for Diesel Opacity Inspector

A person to whom the Division has issued a Certificate of Qualification, or Certificate of Requalification, who has not been issued a Diesel Opacity Inspector's license within six (6) months from the date of issuance of the most recently issued certificate shall be deemed to have forfeited the said certificate and shall be required to reapply if a new Certificate of Qualification is requested.

### **V. Opacity Standards for Diesel-Powered Motor Vehicles Subject to Part B of This Regulation**

V.A. In order for a vehicle (owner) to obtain a valid Certification of Emissions Compliance, the exhaust opacity from the diesel-powered motor vehicle subject to the annual Diesel Opacity Inspection Program may not exceed the following maximum opacity level.

V.B. The smoke opacity standard for all naturally aspirated light-duty diesel vehicles subject to opacity test under Part B of this regulation shall be forty percent (40%) opacity for (5) five seconds. The smoke opacity standard for turbocharged light-duty vehicles shall be thirty-five percent (35%) for five (5) seconds.

For all heavy-duty vehicles subject to opacity tests under Part B of this regulation, the opacity standards shall be thirty-five percent (35%) and twenty percent (20%) for naturally aspirated and turbocharged diesel vehicles respectively for five (5) seconds.

V.C. Peak opacity (snap/free acceleration) tests shall be a component of the Heavy-duty diesel vehicle tests and conducted following the procedures specified in Part B, III. of this regulation, and recorded on the Opacity Inspection Form, but no peak opacity standard shall apply.

V.D. Opacity Standards for Diesel Vehicles with Non-Original Engines (Engine Changes)

For those vehicles in which the original engine has been replaced, the opacity standards and applicable emissions control equipment for the year and model of the vehicle body/chassis, shall apply.

Those diesel-powered vehicles titled/registered as model year 1991 and newer, that were assembled by other than a licensed manufacturer such as a kit-car or truck glider kit, and registered/titled according to Section(s) 42-1-102 (45.5) and/or 42-12-203; or the applicable emissions control equipment will be based upon a determination by technical center personnel of the vintage of the vehicle engine. An affidavit may be issued by the technical center personnel and the year of the engine shall be presumed to be that stated by the vehicle owner unless it is determined by center personnel, after physical inspection of the vehicle engine, that the year of the engine is other than stated by the owner. The emissions standards for a vehicle of this classification will be determined by the model year of the vehicle as registered/titled.

### **PART C STANDARDS FOR VISIBLE POLLUTANTS FROM DIESEL ENGINE POWERED VEHICLES (Operating on Roads, Streets and Highways)**

I. No person shall emit or cause to be emitted into the atmosphere from any diesel-powered motor vehicle of fourteen thousand pounds Gross Vehicle Weight Rating or less, any air contaminant, for a period greater than five (5) consecutive seconds, which is of such a shade or density as to obscure an observer's vision to a degree in excess of 40% opacity.

- II. No person shall emit or cause to be emitted into the atmosphere from any diesel-powered motor vehicle of more than fourteen thousand pounds Gross Vehicle Weight Rating/any air contaminant, for a period greater than five (5) consecutive seconds, which is of such a shade or density as to obscure an observer's vision to a degree in excess of 35% opacity, with the exception of Subpart III or Subpart IV.
- III. No person shall emit or cause to be emitted into the atmosphere from any naturally aspirated (non-turbocharged) diesel-powered motor vehicle of more than fourteen thousand pounds Gross Vehicle Weight Rating/Gross Combination Weight, operated above 7,000 feet (mean sea level) any air contaminant for a period greater than five (5) consecutive seconds, which is of such a shade or density as to obscure an observer's vision to a degree in excess of 40% opacity.
- IV. No person shall emit or cause to be emitted into the atmosphere from any diesel-powered motor vehicle of more than fourteen thousand pounds Gross Vehicle Weight Rating any air contaminant which is of such a shade or density as to obscure an observer's vision to a degree in excess of 40% opacity when tested using an SAE J1667 Snap acceleration test procedure.
- V. No person shall emit or cause to be emitted into the atmosphere from any diesel-powered motor vehicle under transient conditions, any air contaminant, for any period of time, which is of such a shade or density as to obscure an observer's vision to a degree in excess of 60% opacity.
- VI. Any diesel-powered motor vehicle exceeding these requirements shall be exempt for a period of 10 minutes, if the emissions are a direct result of a cold engine start-up and provided the vehicle is in a stationary position.

These standards shall apply to motor vehicles intended, designed, and manufactured primarily for travel or use in transporting person, property, auxiliary equipment, and/or cargo over roads, streets, and highways.

Enforcement of these emission standards shall be by peace officers and environmental officers pursuant to the authority of 42-4-412, or 42-4-413 C.R.S., within program boundaries.

## **PART D STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE**

### **I. Amendment to Parts A and B, and Creation of this Part D**

**Adopted January 15, 1998**

#### Basis and Purpose

Regulation Number 12 establishes programs for Diesel Opacity Inspections and for Diesel Fleet Self-Certification. Both programs require annual emissions inspections for diesel vehicles covered by such programs. In 1997, the General Assembly revised §42-4-406 (1) (b) (II), C.R.S., to provide that new diesel vehicles do not need to be inspected until such vehicles are two years old, or upon a transfer of ownership. The revisions adopted on January 15, 1998 create such an exemption from inspection requirements for new diesel vehicles.

#### Federal Requirements

The Diesel Inspection Programs established in Regulation Number 12 are federally required because the State took emission reduction credit for such programs in the Denver element of the State Implementation Plan for particulate matter (Denver PM10 SIP). However, federal law does not expressly require the State to have opacity or emissions inspection programs for diesel vehicles and such programs are not required for areas outside of the Denver PM10 non-attainment area.

Federal law is entirely silent on the question of whether the creation of a two-year exemption from inspection requirements for new diesel vehicles will change the emissions reduction credit associated with such programs. Since federal law is silent on this issue, the Commission cannot determine whether federal law permits the State to create an exemption for such vehicles for more than the two years established by § 42-4-406 (1) (b) (II), C.R.S., or whether such exemption is not required by provisions of the Federal Act or is otherwise more stringent than requirements of the Federal Act. Nevertheless, the January 15, 1998 revisions should be submitted to EPA as a revision to the Denver PM10 SIP. The submission of this revision to EPA is required in order to give effect to § 42-4-406 (1) (b) (II) in federal law. Failure to include the January 15, 1998 revisions in the SIP would result in more stringent SIP provisions.

The Division intends to propose a revision to Regulation Number 12 to remove the Diesel Inspection Programs for Colorado Springs, Greeley, and Fort Collins from the SIP.

#### Statutory Authority

Specific statutory authority for the amendments is provided in §§ 42-4-403(1) and 42-4-406 (1) (b) (II).

#### Findings Pursuant to § 25-7-110.8

The January 15, 1998 rule revisions relax existing inspection requirements for diesel vehicles and are not intended to increase the effectiveness of the relevant programs in reducing air pollution. Furthermore, the Commission has no discretion under state law not to create such an exemption for new diesel vehicles. For these reasons the determinations enumerated in § 25-7-110.8 (1), C.R.S., do not apply.

## **II. Amendments to Parts B and D**

### **Adopted January 11, 2001**

#### Basis and Purpose

Regulation Number 12 establishes as a control strategy, the Diesel Opacity Inspection and the Diesel Fleet Self-Certification Programs. Both programs require periodic inspection of both light-duty and heavy-duty diesel powered vehicles. Emissions related repairs are required of those vehicles that do not comply with inspection requirements. The intended purpose of Regulation Number 12 is to reduce diesel vehicle emissions. The diesel inspection and maintenance (diesel I/M) program is one of the control measures relied on to demonstrate attainment of federal requirements in the Denver PM State Implementation Plan (SIP).

The rule revision implements the provisions of Section 42-4-408 (3), C.R.S. as amended pursuant to H.B. '00-1381. H.B. '00-1381 amends the inspection fee for diesel powered motor vehicles from a maximum of \$45 to a fee no greater than the posted hourly shop rate for one hour. The amendments to Section 42-4-408 (3) require inspection station personnel to notify diesel vehicle owner/operators of the fee, prior to conducting any element of the inspection.

The revisions to Regulation Number 12 correct a statutory reference which established inspection fees that resulted when Title 42 of the Colorado Revised Statutes was recodified.

#### Federal Requirements

The federal act and EPA requirements are silent to the issue of inspections fees, how fees may be structured and the posting of fees. The setting of a vehicle inspection fee or fees and the required posting of same are the prerogative of individual states. The fees specified and the manner, in which fees shall be posted, shall not be incorporated into the State Implementation Plan.

#### Statutory Authority

Specific statutory authority for amendments to Regulation Number 12 is Section 42-4-403, C.R.S.

#### Findings Pursuant to Section 25-7-110.8, C.R.S

The January 11, 2001 rule revisions do not increase or decrease the effectiveness of the Diesel Opacity Inspection Program in reducing diesel emissions. The rule revision results in Regulation Number 12 being consistent with Section 42-4-408 (3), C.R.S. as amended. For these reasons, the determinations enumerated in Section 25-7-110.8 (1), C.R.S. do not apply.

### **III. Amendments to Parts A, B, C, and, D**

#### **Adopted September 18, 2003**

##### Basis and Purpose

Regulation Number 12 establishes as a control strategy, the Diesel Opacity Inspection and the Diesel Fleet Self-Certification Programs. Both programs require periodic inspection of both light-duty and heavy-duty diesel powered vehicles. Emissions related repairs are required of those vehicles that do not comply with inspection requirements. The intended purpose of Regulation Number 12 is to reduce diesel vehicle emissions. The diesel inspection and maintenance (diesel I/M) program is no longer an element of the State Implementation Plan, with the April 19, 2001 changes to the PM SIP, all elements of regulation 12 were removed from the SIP. The US EPA approved this SIP revision on September 16, 2002 and it became effective October 16, 2002.

The rule revision implements various provisions of Section 42-4-401 through 414 and 25-7-122 C.R.S. as amended pursuant to H.B. '03-1053, as follows:

- The distinction between light and Heavy-duty diesel vehicles is redefined,
- New Heavy-duty diesel vehicles become exempt from emissions testing for four years,
- The Heavy-duty diesel test cycle is extended to two years,
- Vehicles routinely operated in the program area are required to be tested,
- Allows the use of an automated snap-acceleration test procedure for fleets and for roadside enforcement,
- Eliminates visual opacity testing for fleets older than ten years,
- Allows the use of newer technology opacity meters,
- Obsolescent and conforming changes are made, which changes are not substantive

The revised rule identifies the *J1667 Recommended Practice, Snap Acceleration Smoke Test Procedure for Heavy-duty Powered Motor Vehicles*, © 1996 Society of Automotive Engineers Inc. (SAE) as the automated snap-acceleration test procedure that may be used for fleet inspections. The Commission adopted the SAE J1667 test procedures based on the authority set out in Section 42-4-414 (2) (b), C.R.S., as revised by HB03-1053 allowing the use of an automated opacity metering protocol. The SAE J1667 test procedure is such an automated opacity metering protocol.

One participant stated that small operators tend to own older vehicles than large operators. Therefore, he noted that the mandatory use of an opacity meter for older fleet vehicles, but not for newer fleet vehicles, imposes a somewhat more onerous requirement on small operators. However, the requirement to use an opacity meter when testing older vehicles is set out in statute and the Commission does not have the

authority to change that requirement. Section 42-4-414 (2) (b). Furthermore, the requirement for the use of an opacity meter on older, but not newer vehicles is justified because newer vehicles tend to be cleaner than older vehicles.

The Commission also readopted the rule in its entirety. Prior to HB03-1053, Section 42-4-414, C.R.S., vested rulemaking authority over the Diesel Fleet Self-Certification Program with the executive director of the department of public health and environment. The previous version of Part A, of Regulation Number 12 was adopted by the Commission pursuant to a delegation of authority from the executive director. HB03-1053 revised Section 42-4-414 to delegate such rulemaking authority to the Commission directly from the General Assembly. The Commission hereby readopts Regulation Number 12 in its entirety pursuant to the authority granted it by the General Assembly in Sections 42-4-403 and 42-4-414.

### Federal Requirements

There are no federal laws or rules requiring the Diesel Fleet Self-Certification Program or the Diesel Opacity Inspection Program. Both programs have been removed from the state implementation plan. Both programs are established by state statute and exceed the minimum federal requirements.

### Statutory Authority

Specific statutory authority for amendments to Regulation Number 12 is set out in Sections 42-4-403 and 42-4-414, C.R.S.

### Findings Pursuant To § 25-7-110.8

The selection of the SAE J1667 test procedures as the automated opacity metering protocol approved by the Commission is based on reasonably available, validated, reviewed, and sound scientific methodologies. All validated, reviewed, and sound scientific methodologies and information made available by interested parties concerning the selection of an automated opacity metering protocol was considered. In fact, the J1667 test procedure was adopted, in part, due to suggestions from the diesel engine manufacturing sector over the years. The primary purpose of the adoption of the SAE J667 test procedure is to make diesel emissions test more convenient; it was not adopted to result in a demonstrable reduction in air pollution. To further enhance convenience and flexibility, the test is made optional for fleets. Fleets have the choice of continuing to use the lug-down tests already set out in the rule. For fleets, the test is optional. Thus, the adoption of the J1667 test procedures is administrative in nature. The optional nature of the J1667 test procedures makes the rule the most cost-effective alternative and will maximize the air quality benefits of Regulation Number 12 in the most cost-effective manner by giving the fleet's additional flexibility.

Most of the remaining rule revisions are exempt from the determinations required by § 25-7-110.8 C.R.S., because the changes were adopted to implement statutory provisions, rather than reduce air pollution. For the most part, the regulatory revisions relax existing inspections for diesel vehicles and the Commission has no discretion but to adopt them under state law. One area in which the Commission exercised discretion in a manner that may result in a reduction in air pollution concerns the definitions of the terms "principally operated" and "routinely operated". However, such definitions are administrative in nature and are also exempt from the requirements of Section 25-7-110.8, C.R.S. HB03-1053 expanded the scope of the programs to include vehicles "routinely operated in the program area or principally operated from a terminal, maintenance facility, branch, or division located within the program area", but did not define these terms. The statutory requirement to include such vehicles in the programs cannot reasonably be administered without defining the terms. For guidance in defining the terms, the Commission turned to the 90-day rule established in Section 42-4-310 (1) (c), C.R.S., for motorists commuting into the AIR Program. Thus, such definitions are administrative, rather than scientific, in nature. The 90-day rule was chosen to implement the overall legislative intent, rather than to achieve a specific reduction in air pollution. For these reasons the determinations enumerated in § 25-7-110.8 (1), C.R.S., do not apply.



#### **IV. Amendments to Parts A, B, and D**

**Adopted October 21, 2004**

##### Basis and Purpose

The rule revision implements provisions of Section 42-4-406 (1)(b)(II) and 42-4-414 (2)(c) as amended pursuant to H.B. '04-1025, to remove the requirement of an emissions inspection upon change of ownership while the vehicle is still within its model year exemption, unless there is less than twelve months left on that exemption. The model year exemption for new light duty diesel vehicles is two years; and for new heavy-duty diesels the exemption period is four years.

##### Statutory Authority

Specific statutory authority for amendments to Regulation Number 12 is set out in Sections 42-4-403 and 42-4-414, C.R.S.

##### Findings pursuant to § 25-7-110.8

The rule revisions are exempt from the determinations required by § 25-7-110.8 C.R.S. because the changes were adopted to implement statutory provisions, rather than reduce air pollution. The regulatory revisions relax existing inspections for diesel vehicles and the Commission has no discretion but to adopt them under state law.

#### **V. Amendments to Parts A, B, and D**

**Adopted March 18, 2005**

##### Basis and Purpose

The Colorado Department of Public Health and Environment, Air Pollution Control Division proposes amendments to Air Quality Regulation Number 12: Reduction of Diesel Vehicle Emissions. The proposed amendments delete obsolete provisions and correct typographical and grammatical errors. The proposed revisions will have no regulatory impact on any person, facility, or activity.

The proposed amendments remove transitional provisions of the diesel emissions inspection programs within the Front Range. The transition process will be complete by December 31, 2004, rendering the transition provisions in the Regulation obsolete. Legislative Legal Services requested that the transition language be removed from the rule in order to avoid confusion and potential conflict with statute. In addition, date references that are in the past have been removed from the proposed rule.

##### Statutory Authority

Specific statutory authority for amendments to Regulation Number 12 is set out in Sections 42-4-403 and 42-4-414, C.R.S.

##### Findings pursuant to § 25-7-110.8

The rule revisions are exempt from the determinations required by § 25-7-110.8 C.R.S. because the changes were adopted to clarify and conform to existing statutory provisions, rather than reduce air pollution. The regulatory revisions remove references to obsolete provisions for diesel vehicles. The proposed revisions will have no regulatory impact on any person, facility, or activity.

#### **VI. Amendments to Parts B and D**

## **Adopted November 16, 2006**

### Basis and Purpose

Regulation Number 12 establishes as a control strategy, the Diesel Opacity Inspection and the Diesel Fleet Self-Certification Programs. Both programs require periodic inspection of both light-duty and heavy-duty diesel powered vehicles. Emissions related repairs are required of those vehicles that do not comply with inspection requirements. The intended purpose of Regulation Number 12 is to reduce diesel vehicle emissions.

The rule revision implements provisions of Section 42-4-406 C.R.S. as amended pursuant to S.B. 06-058, as follows:

- Light-duty diesel test cycles are extended to two years for models 10 years old or newer and model year 2004 and newer,
- Extend the light-duty model year exemption from two years to four years,
- Remove obsolescent language which changes are not substantive.

The changes were adopted to implement statutory changes and the Commission has no discretion but to adopt the provisions of S.B. 06-058. The rule provides regulatory relief and is not intended to reduce air pollution.

### Statutory Authority

Specific statutory authority for amendments to Regulation Number 12 is set out in Sections 42-4-403 and 42-4-414, C.R.S.

### Findings pursuant to § 25-7-110.8

The rule revisions are exempt from the determinations required by § 25-7-110.8 C.R.S. because the changes were adopted to implement statutory provisions and remove an obsolete provision rather than reduce air pollution. The regulatory revisions relax existing inspections for diesel vehicles and the Commission has no discretion but to adopt them under state law.

Further, these revisions will include any typographical and grammatical errors throughout the regulation.

## **VII. Amendments to Parts A, B, C and D**

### **Adopted October 20, 2011**

#### Basis and Purpose

The purpose of this rulemaking is to revise Regulation Number 12 to conform to provisions of House Bill 11-1157. House Bill 11-1157 permits heavy-duty vehicles that are registered in the Fleet Self-Certification Opacity Inspection Program area, but are physically based and principally operated outside of the program area to forgo the periodic opacity testing requirements contained in Air Quality Control Commission Regulation Number 12 Part A.

It is projected by Air Pollution Control Division staff that the mandated changes to Regulation Number 12 will affect less than 100 vehicles and result in no additional cost to the program, or air quality benefits. As such, there is no cost/benefit to be derived from the mandated changes.

#### Federal Requirements

There are currently no federal requirements. Regulation No 12 regulates both the Fleet Self-Certification Opacity Testing Program (Regulation No 12, Part A), and the non fleet Diesel Opacity Inspection Program (Regulation Number 12, Part B). Both programs are aimed at improving air quality though reducing diesel opacity (smoke) from identified high opacity producing diesel vehicles.

#### Specific Statutory Authority

Specific Statutory Authority for the revisions to Regulation Number 12, are contained in Sections 42-4-401 through 42-4-414, C.R.S., and specifically 42-4-414, C.R.S., for the Fleet Self-Certification Opacity Inspection Program.

#### Scientific/Technical Rationale

This rule is based on reasonably available validated, reviewed, and sound scientific methodologies.

#### Findings pursuant to Section 25-7-110.8

The rule revisions are exempt from the determinations required by Section 25-7-110.8 C.R.S. because the changes were adopted to implement statutory provisions rather than reduce air pollution. The regulatory revisions relax existing inspections for diesel vehicles and the Commission has no discretion but to adopt them under state law.

Further, these revisions will include any typographical, grammatical and formatting errors throughout the regulation.

### **VIII. Amendments to Part A**

#### **Adopted August 15, 2013**

##### Basis and Purpose

The purpose of this rulemaking is to revise Regulation Number 12 to adopt provisions contained in House Bill 13-1091. These revisions will permit qualified fleets to use “exemplary maintenance” as an alternative method to demonstrate compliance with opacity standards on vehicles ten years old or newer. Exemplary maintenance would be an optional choice, at the fleet’s own discretion.

Air Pollution Control Division staff project that exemplary maintenance practices that continuously monitor, maintain, and repair modern fleet diesel vehicles, will result in at least the same level of air quality improvement as the existing periodic opacity testing. Well maintained late model heavy-duty diesel vehicles are equipped with extensive exhaust aftertreatment equipment and sophisticated engine controls. Late model heavy trucks when properly maintained, simply do not smoke.

##### Federal Requirements

There are currently no federal requirements. Regulation No 12 regulates both the Fleet Self-Certification Opacity Testing Program (Regulation No 12, Part A), and the non fleet Diesel Opacity Inspection Program (Regulation No. 12, Part B). Both programs are aimed at improving air quality though reducing diesel opacity (smoke) from identified high opacity producing diesel vehicles or for the self-certification fleets, through the proposed exemplary maintenance practices.

#### Specific Statutory Authority

Specific Statutory Authority for the revisions to Regulation No. 12, are contained in Sections 42-4-401 through 42-4(414), C.R.S., and specifically 42-4(414), C.R.S., for the Fleet Self-Certification Opacity

Inspection Program. The exemplary maintenance option is specifically permitted under C.R.S. 42-4-414(2)(a)(IV)(b.5), as amended by HB 13-1091.

#### Scientific/Technical Rational

This rule is based on reasonably available validated, reviewed, and sound scientific methodologies.

Findings pursuant to Section 25-7-110.8

Since fleets may use exemplary maintenance as an option to periodic opacity testing, and is voluntary on the fleet's part, there is no measureable economic impact from this proposed rule change. Fleets are able to either participate in this program or conduct their traditional opacity testing at their choice, depending on whichever is less expensive and/or that meets their fleet's requirements. Many fleets currently conduct their own exemplary maintenance practices that mirror the proposed requirements.

### **IX. Amendments to Parts A, B, C and D**

#### **Adopted August 18, 2016**

##### Basis and Purpose

The purpose of this rulemaking is to: (1) revise Regulation Number 12 to make the current Diesel Fleet Self-Certification Opacity Program more convenient to operators of vehicles over 26,000 pounds gross vehicle weight (GVW); (2) allow law enforcement officers to enforce smoking vehicle statutes and regulations more consistently, and (3) make changes to data and secure document handling that will expedite on-line registration and renewal for diesel owners.

Pursuant to HB15-1134, this rulemaking revises the number of model year exemptions for heavy-duty diesel vehicles over 26,000 GVW from four to six years. The purpose of this increase in the model year exemption period is to lower the regulatory burden placed on Self-Certification Program Fleets and other operators of new technology heavy duty trucks, without lessening the overall air quality benefit of the program.

The rulemaking also establishes an on-road opacity standard with no time limit as the Commission requested at its January 21, 2016 meeting. This allows law enforcement officers to determine violations of opacity standards more consistently, without the need to determine opacity over a period of time. This is intended to allow law enforcement officers to better address vehicles emitting high amounts of smoke in short bursts. This will result in better enforcement of diesel vehicle tampering statutes.

Finally, the rulemaking automates data management and secures document handling that will permit Self-Certification Program fleets to renew their vehicle registrations on-line. On-line registration renewal will substantially increase fleet operator convenience. The proposed rule changes also adopt various housekeeping and wording changes that reflect advances in diesel technology, as well as clarifying existing inspection procedures.

Changes contained in this rule making will result in at least the same level of air quality improvement as the existing periodic opacity testing, at a reduced program cost to fleet operators along with increased convenience to fleet operators. Greater smoking vehicle enforcement will also result in motorists being exposed to fewer heavily smoking diesel vehicles on the roadway.

##### Federal Requirements

There are currently no federal requirements for the Diesel Opacity Programs. The Diesel opacity programs are state-only programs.

Regulation No 12 regulates both the Fleet Self-Certification Opacity Testing Program (Regulation No 12, Part A), and the non-fleet Diesel Opacity Inspection Program (Regulation No. 12, Part B). Both programs are aimed at improving air quality through reducing diesel opacity (smoke) from identified high opacity producing diesel vehicles.

#### Specific Statutory Authority

Specific statutory authority for the revisions to Regulation No. 12, are contained in sections 42-4-406(1)(b) (II)(C) and 42-4-414(2)(c), C.R.S., (as amended by HB15-1134 regarding model year exemptions); section 42-4-412(2)(a), C.R.S. (regarding on-road opacity standards); and section 42-4-403(1), C.R.S. (regarding changes to automate inspection data management and secure document handling).

#### Scientific/Technical Rationale

This rule is based on reasonably available, validated, reviewed, and sound scientific methodologies.

Findings pursuant to § 25-7-110.8, C.R.S.

- a. These revisions are based on sound science. A technical review of the Self-Certification Program was undertaken that utilized sound scientific principles.
- b. Evidence in the record demonstrates the rule change will result in demonstrable emission reductions. Extending the model year exemption to six years will result in a minimum loss of identified excessively smoking heavy-duty vehicles, estimated to be five vehicles. Air quality benefit is expected to be achieved through the identification and citation of diesel vehicles exhibiting high amounts of smoke in short bursts. This is expected to more than offset any air quality loss through extending model year exemptions to six years.
- c. Modifications to Regulation Number 12 will result in benefits to public health and to the environment. The proposed changes to Regulation Number 12 will result, as stated above, in a reduction in smoke and particulate emissions from smoking vehicles at a cost savings to government and regulated communities as determined through the economic cost analysis conducted.
- d. This action is cost effective and provides flexibility. A cost savings is realized for Industry while increasing flexibility for fleets in complying with program requirements for the diesel opacity programs.
- e. The rule change maximizes benefits to air quality in a cost-effective manner. The rule change increases air quality benefits of the diesel opacity programs, while reducing program costs.

#### **X. AMENDMENTS TO PARTS A, B, C, and D**

**ADOPTED October 18, 2018**

#### Basis and Purpose

The changes to Regulation Number 12 are primarily administrative in nature. They are intended to clarify and make more transparent existing regulatory provisions. They correct administrative errors and address specific fleet reporting and equipment requirements.

This rulemaking formalizes certain equipment, procedure, and training requirements including: 1) the requirements for reference materials, including a Division-approved current emissions control systems application guide at inspection stations in the Diesel Opacity Inspection Program, a practice these stations already observe; 2) the requirement for electronic reporting by Diesel Fleet Self-Certification

Program fleets (electronic reporting already exists and can be conducted through any existing computer or smart phone); 3) the requirement for Diesel Opacity Inspection Program stations to possess two neutral density filters in case of breakage to one, a prudent practice that is already being practiced; 4) the requirement all Diesel Opacity Inspection Program inspectors complete four hours of inspector training (this training is currently offered); and 5) correcting an error in the acceptability criteria of aftermarket replacement emissions parts.

Changes to Regulation Number 12 are being made to clarify Division authority to resolve specific technical inspection issues and provide technical assistance to the Department of Revenue in performing station audits. A new definition, "Trained Observer", is added to better describe a fleet employee or designee that has completed Opacity Inspector training and holds a Certification of Qualification. It also clarifies that training is a prerequisite to a Certification of Qualification.

The rulemaking points out that Diesel Fleet Self-Certification Program fleets are not removed from the program due to program violations, though they may be required to have their fleet vehicles inspected through the Diesel Opacity Inspection Program. Other clarifications include duties of the Department of Revenue and the acceptability of aftermarket parts.

Additional changes conform GVWR language with statute, correct statutory and internal cites, and correct terms to conform with regulatory and statutory language. They simplify syntax and make other grammatical corrections.

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act, Section 24-4-103, C.R.S., and the statutory authority provided in Sections 42-4-401 through 42-4-414, C.R.S.

#### Federal Requirements

The Diesel Fleet Self-Certification and the Diesel Opacity Inspection Programs are state-only programs. They are not contained in Colorado's State Implementation Plan. There are currently no federal requirements for either program. Authority for the Diesel Opacity Inspection and Diesel Fleet Self-Certification Opacity Testing Programs is specifically provided under Colorado law.

#### Specific Statutory Authority

Specific Statutory Authority for the programs are contained in Sections 42-4-401 through 42-4-414, C.R.S.

#### Scientific/Technical Rationale

This rule is based on reasonably available validated, reviewed, and sound scientific methodologies.

#### Determinations pursuant to § 25-7-110.8, C.R.S.

The Commission has determined that these changes to Regulation Number 12 comply with the requirements of Section 25-7-110.8(a)-(e), C.R.S.

The revisions are based on sound science. A technical review of the Diesel Opacity Inspection and Diesel Fleet Self-Certification Opacity Testing Programs was undertaken that utilized sound scientific methodologies. Regulation No 12 regulates both the Diesel Fleet Self-Certification Program (Regulation Number 12, Part A), and the Diesel Opacity Inspection Program (Regulation Number 12, Part B). Both programs are aimed at improving air quality through reducing diesel opacity (smoke) from identified high opacity producing diesel vehicles. Self-certification fleets may also reduce diesel emissions through exemplary maintenance practices.

The changes to Regulation Number 12 are primarily administrative in nature. Modifications to Regulation Number 12 will result in continued benefits to public health and to the environment. The rule change maximizes benefits to air quality in the most cost-effective manner. The changes to the Regulation improve the integrity of the diesel opacity programs through providing additional clarity on the regulatory requirements.

---

**Editor's Notes**

History

**CYNTHIA H. COFFMAN**  
Attorney General  
**MELANIE J. SNYDER**  
Chief Deputy Attorney General  
**LEORA JOSEPH**  
Chief of Staff  
**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000  
  
**Office of the Attorney General**

Tracking number: 2018-00318

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

Air Quality Control Commission

**on 10/18/2018**

5 CCR 1001-15

**REGULATION NUMBER 12 REDUCTION OF DIESEL VEHICLE EMISSIONS**

The above-referenced rules were submitted to this office on 10/19/2018 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 31, 2018 08:47:24

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General



## **Permanent Rules Adopted**

### **Department**

Department of Public Health and Environment

### **Agency**

Water Quality Control Commission (1002 Series)

### **CCR number**

5 CCR 1002-84

### **Rule title**

5 CCR 1002-84 REGULATION NO. 84 - RECLAIMED DOMESTIC WASTEWATER  
CONTROL 1 - eff 11/30/2018

### **Effective date**

11/30/2018

## DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

### Water Quality Control Commission

## REGULATION NO. 84 - RECLAIMED WATER CONTROL REGULATION

### 5 CCR 1002-84

---

#### 84.1 AUTHORITY

This regulation is promulgated pursuant to the Colorado Water Quality Control Act (CWQCA) section 25-8-101 through 25-8-703, C.R.S. In particular, it is promulgated under sections 25-8-202, 25-8-205, and 25-8-205.8, C.R.S.

Materials incorporated by reference are available for public inspection during normal business hours, or copies may be obtained at reasonable cost, from the Administrator, Water Quality Control Commission, 4300 Cherry Creek Drive South, Denver, Colorado 80246. Unless expressly stated otherwise, materials incorporated by reference are those editions dated as referenced by date in the regulation or in existence as of the date this regulation is promulgated or revised by the Water Quality Control Commission and references do not include later amendments to or editions of the incorporated material. All material incorporated by reference may be examined at any state publications depository.

#### 84.2 PURPOSE

The purpose of this regulation is to establish requirements, prohibitions, standards and concentration limits for the use of reclaimed water to protect public health and the environment while encouraging the use of reclaimed water.

#### 84.3 SEVERABILITY

The provisions of this regulation are severable, and if any provisions or the application of the provisions to any circumstances is held invalid, the application of such provision to other circumstances, and the remainder of this regulation shall not be affected thereby.

#### 84.4 APPLICABILITY

This regulation applies to the use of reclaimed water treated by centralized reclaimed water treatment systems and localized reclaimed water treatment systems for landscape irrigation, agricultural irrigation, fire protection, industrial, commercial, and toilet and urinal flushing uses identified in section 84.9 of this regulation. This regulation does not apply to wastewater that has been treated and released to state waters prior to subsequent use or to wastewater that has been treated and used at a domestic wastewater treatment plant site for landscape irrigation or process uses. This regulation applies to individual treaters and users, as defined below, upon the issuance of a notice of authorization pursuant to section 84.6(C) herein by the Water Quality Control Division.

#### 84.5 DEFINITIONS

The following definitions shall apply:

- (1) Agricultural Irrigation means use of reclaimed water for the irrigation of crops and trees, excluding crops produced for direct human consumption, crops where lactating dairy animals forage, and trees that produce nuts or fruit intended for human consumption.

- (2) Agricultural Irrigation User means a person who uses reclaimed water for the purpose of agricultural irrigation.
- (3) Agronomic Rate means the rate of application of reclaimed water and associated nutrients to plants that is necessary to satisfy the plants' nutritional and watering requirements while strictly minimizing the amount of nutrients that run off to surface waters or which pass below the root zone of the plants.
- (4) Approved Cross Connection Control Device or Method has the same meaning as control device as defined in section 11.37(1)(c) of Regulation 5 CCR 1002-11 (Regulation #11).
- (5) Automated Vehicle Washing means the cleaning of vehicles and associated equipment, such as trailers, where automated equipment is used to apply spray water, cleaning products, and/or rinse water, where there is no public exposure to reclaimed water under normal operations and only limited and controlled contact with reclaimed water by trained workers.
- (6) Bag Filters means pressure-driven separation devices that remove particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside.
- (7) Cartridge Filters means pressure-driven separation devices that remove particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.
- (8) Centralized reclaimed water treatment system or Centralized System means a domestic wastewater treatment works that receives domestic wastewater from a diverse service area for treatment to produce reclaimed water for beneficial use where the service area has meaningful inputs from industrial or other diluting sources.
- (9) Certified Cross-Connection Control Technician has the same meaning as the term "certified cross-connection control technician" as defined in section 11.39(2)(h) of 5 CCR 1002-11 (Regulation #11).
- (10) Certified Operator has the same meaning as the term "certified operator" as defined in section 100.2(3) of Regulation 5 CCR 1003-2 (Regulation #100).
- (11) Commercial Laundry means a facility that uses water to clean clothing and other textile products where only laundry workers operate the washing machines and cleaning equipment, where there is no public exposure to reclaimed water under normal operations and only limited and controlled contact with reclaimed water by trained workers.
- (12) Commercial User means a person who uses reclaimed water in the operation of a business listed in Table A of section 84.8.
- (13) Conventional Filtration means a series of processes including coagulation, flocculation, sedimentation (or equivalent form of clarification), and granular media filtration.
- (14) Direct Filtration means a series of processes including coagulation and granular media filtration but excluding sedimentation.

- (15) Division means the Water Quality Control Division of the Colorado Department of Public Health and Environment.
- (16) Evaporative Industrial Processes means the use of water in an industrial process where the benefit of such use requires the evaporation of water, requiring additional make-up water, where there is no public exposure to reclaimed water under normal operations and only limited and controlled contact with reclaimed water by trained workers.
- (17) Fire Protection -- Nonresidential means firefighting activities where water is made available at fire hydrants located in areas other than residential, from fire trucks, and in fire sprinkler and interior standpipe systems in buildings in commercial/industrial areas.
- (18) Fire Protection – Residential means firefighting activities where water is made available at fire hydrants in residential areas, from fire trucks, and in fire sprinkler and interior standpipe systems at any structure where the occupants do not have access to the plumbing for maintenance and repair.
- (19) Industrial User means a person who uses reclaimed water for industrial processes or in the construction process. Approved industrial uses are listed in Table A of section 84.9.
- (20) Irrigation System means the facilities, piping and other equipment used by a Landscape Irrigation User or an Agricultural Irrigation User.
- (21) Landscape Irrigation means irrigation of areas of grass, trees, and other vegetation that are accessible to the public, including, but not limited to, parks, greenbelts, golf courses, and common areas at apartments, townhouses, commercial/business parks, and other similar complexes.
- (22) Landscape Irrigation User means a person who uses reclaimed water for the purpose of landscape irrigation.
- (23) Localized Reclaimed Water Treatment System or Localized System means a domestic wastewater treatment works that receives domestic wastewater from a single building, multiple buildings within a single property or area bounded by dedicated streets or ways, or a district designated by a City or County for treatment to produce reclaimed water for beneficial use where the source water does not have meaningful inputs from industrial or other diluting sources.
- (24) Manual Non-Public Vehicle Washing means the cleaning of vehicles and associated equipment, such as trailers, where any or all of the following are applied manually in the cleaning process: spray water, cleaning products, and/or rinse water; where there is no public access to the vehicle washing facility and only limited and controlled contact with reclaimed water by trained workers.
- (25) Membrane Filtration means a pressure or vacuum driven separation process in which particulate matter larger than 1 micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.
- (26) Non-Discharging Construction and Road Maintenance means the use of reclaimed water for nonpotable applications where water is required for cooling, wetting, dust suppression, or other construction and road maintenance activities, where there is no public exposure to reclaimed water under normal operations and only limited and controlled contact with reclaimed water by trained workers.

- (27) Non-Evaporative Industrial Processes means the use of water in an industrial process where water is not evaporated in the process and is used within a contained system, where there is no public exposure to reclaimed water under normal operations and only limited and controlled contact with reclaimed water by trained workers.
- (28) Person means an individual, corporation, partnership, association, state or political subdivision thereof, federal agency, state agency, municipality, commission, or interstate body.
- (29) Point of Compliance means a point identified by the treater in the reclaimed water treatment or transmission system after all treatment has been completed and prior to dilution and blending of water has occurred. If reclaimed water is used for indoor nonpotable uses within a building where plumbing fixtures are accessible by the general public, the "point of compliance" for disinfection residual is at the location where water is delivered to the occupied premises.
- (30) Potable Water has the same meaning as "Finished Water" as defined in section 11.3(32) of the Colorado Primary Drinking Water Regulations, 5 CCR 1002-11.
- (31) Reclaimed Water is domestic wastewater that has received secondary treatment by a domestic wastewater treatment works (centralized system or a localized system) and such additional treatment as to enable the wastewater to meet the standards for approved uses.
- (32) Resident-Controlled Landscape Irrigation means irrigation of areas of grass, trees and other vegetation located on the property of a single family or other residential occupancy where the occupant is the User and is responsible for the maintenance and/or operation of the irrigation system.
- (33) Restricted Access means controlled and limited access to the areas where reclaimed water meeting Category 1 standards, as defined in section 84.7, is used.
- (34) Secondary Treatment means the biological treatment of wastewater to meet BOD<sub>5</sub>, total suspended solids ("TSS"); CBOD<sub>5</sub>; and Oil and Grease numeric limitations in section 62.4 of Regulation #62.
- (35) Toilet and Urinal Flushing or Fixture Flushing means the use of reclaimed water to flush toilets and urinals only in multifamily residential structures or nonresidential structures where the toilet and urinal installations are conducted in accordance with and conform to Article 58 of Title 12 [Plumbers] and Rules promulgated to that Article.
- (36) Trained Worker means a person employed at the site where reclaimed water is used, who has been provided with the information specific to the additional conditions specified in section 84.9 that are applicable to that site's approved use(s) of reclaimed water.
- (37) Transmission System means the treater's facilities that transport treated reclaimed water between the treater and users.
- (38) Treater means a person who treats reclaimed water using a centralized reclaimed water treatment system or localized reclaimed water treatment system and provides reclaimed water to a user for the purpose of uses identified in section 84.9. A treater may also be a user.
- (39) Treatment Technique Requirement means a requirement that specifies a treatment technique(s) for a pathogen reduction target which results in a sufficient reduction in the level of the pathogen to comply with the requirements of Regulation #84.
- (40) Unrestricted Access means uncontrolled access to the areas where reclaimed water meeting the Category 2 standards, as defined in section 84.7, is used.

- (41) User means a person who uses reclaimed water for the purpose of uses identified in section 84.9. A user may also be a treater.
- (42) User Plan to Comply means the information and documentation a user is required to submit to the treater under section 84.11 of this regulation.
- (43) Washwater Applications means water used in washing of miscellaneous construction/maintenance equipment, as well as concrete washout, mineral processing, and other similar uses where reclaimed water is used to remove material from equipment or a desired product, where there is no public exposure to reclaimed water under normal operations and only limited and controlled contact with reclaimed water by trained workers.

#### **84.6 ADMINISTRATION**

(A) Letter of Intent.

Treaters shall submit a letter of intent to the Division and to the local health authority that shall include:

- (1) Treater information including name of entity; legally responsible person's name, address, telephone number, and email address; and for each facility owned and/or operated by the treater where domestic wastewater is treated for transmission, the facility contact person's name, address, telephone number, and email address (if different than legally responsible person).
- (2) Information demonstrating the treater's ability to comply with the applicable reclaimed water standards described in section 84.7 of this regulation and section 84.10 of this regulation (for localized reclaimed water treatment systems), including an 8.5" x 11" or 11" x 17" schematic of the treatment process showing the location of the proposed point(s) of compliance. Include the point of compliance for demonstration that secondary treatment has been attained which may be the same or different than the point where attainment of reclaimed water standards will be demonstrated. Include either: a copy of the site application approval letter and the approval letter for the reclaimed water treatment facility plans and specifications; or evidence of submittal of a site application and plans and specifications to the Division.
- (3) An analysis that demonstrates that reclaimed water used for landscape irrigation or agricultural irrigation will be applied at or below agronomic rates. Landscape irrigation and agricultural irrigation uses may also be subject to waste load allocations or limits as contained in a Total Maximum Daily Load (TMDL) or control regulation governing the watershed within which the irrigation occurs.
- (4) A reuse system management plan which includes: a description of the proposed reclaimed water treatment and transmission systems; a description of the treater's program to inform and educate users on the requirements of this regulation; a description of the treater's plan to oversee the use of reclaimed water by users to ensure, to the maximum extent practicable, that users attain and maintain compliance with this regulation; and evidence of the treater's legal ability (regulation, ordinance, contract, or other acceptable mechanism) to terminate service to a user if the user fails to comply with this regulation.
- (5) A certification statement as per section 84.15 of this regulation.
- (6) For each user, a user plan to comply developed in cooperation with the treater and meeting the requirements of section 84.11.

- (7) Affirmation that the reuse of this water by the treater will not materially injure water rights. For localized systems located within the service area of a water service provider, the letter of intent shall include an affirmation that the proposed installation of a localized system is allowed by the water service provider.
  - (8) When reclaimed water is used for fire protection, the Letter of Intent shall also include a map indicating areas where reclaimed water is to be supplied for fire protection uses and identifying the fire protection authority(s) having jurisdiction. The Letter of Intent shall also include a letter from the fire protection authority(s) having jurisdiction indicating their approval of using reclaimed water for fire protection activities.
  - (9) Where the land application of reclaimed water is subject to limitations on concentration and/or loading of nitrogen or phosphorus pursuant to a control regulation adopted by the Water Quality Control Commission, a statement as to whether the treater intends to have such limitations included in the notice of authorization issued under this regulation or under a permit issued pursuant to Regulation #61.
- (B) Field Verification and Commissioning Report and Inspection. For localized reclaimed water treatment systems, prior to supplying reclaimed water for use, the treater must verify that the system is operational and meets reliability requirements of the log removal targets in section 84.10(A)(2)(a) below. Following completion of field verification and commissioning, the treater shall provide the Division a field verification and commissioning report and an operations and monitoring plan. The field verification and commissioning report will confirm that the treatment system has been installed and is operating in accordance with the approved design criteria in section 84.10(A)(2)(a) below. The operations and monitoring plan will define the frequency and locations for monitoring, data storage, and reporting. The Division may conduct an inspection of the localized reclaimed water treatment system to confirm that the unit treatment processes have been installed in conformance with the approved design and are in operation in accordance with operations and monitoring plan.
- (C) Division Review. The Division will notify the treater in writing not more than thirty (30) calendar days after receipt of a letter of intent (for centralized reclaimed water treatment systems) or the letter of intent, field verification and commissioning report and operations and monitoring plan (for localized reclaimed water treatment systems), and if and in what respects, the letter of intent (for centralized reclaimed water treatment systems) or the letter of intent, field verification and commissioning report and operations and monitoring plan (for localized reclaimed water treatment systems) are incomplete. The review period may be extended by the Division. Where information provided by a user is incomplete, the treater may amend the Letter of Intent to address the deficiency or to remove that user from the letter of intent.
- (D) Issuance of Notices of Authorization. The Division shall either issue or deny the notice of authorization (NOA) within thirty (30) calendar days of its determination that the letter of intent (for centralized reclaimed water treatment systems) or the letter of intent, field verification and commissioning report, and operations and monitoring plan (for localized reclaimed water treatment systems) are complete. Upon the written agreement of the treater, the review period may be extended for a period mutually agreed to by the treater and the Division. The treater shall be notified in writing upon denial of the NOA of such action and the reason(s) for the denial. The Division shall issue a separate NOA to the treater and to each user. Treaters and users planning to use reclaimed water shall have or obtain a NOA from the Division prior to any use of reclaimed water.
- (E) Appeal of Issuance or Denial of NOA. The treater or user, or any other person potentially adversely affected or aggrieved by Division issuance or denial of a NOA, may submit a request, within thirty (30) days of the date of issuance or denial, to the Administrator of the Water Quality Control Commission ("Commission"), for a hearing.

- (1) Such hearing shall be conducted pursuant to the requirements of the Procedural Regulations for all Proceedings before the Commission and the Division, Regulation #21, 5 CCR 1002-21.
  - (2) The person requesting the hearing shall have the burden of proof in all hearings held pursuant to this section.
- (F) Terms and Conditions of NOAs. NOAs issued by the Division shall contain such terms, limitations, and conditions as are deemed necessary by the Division to ensure compliance with this regulation, except for those NOAs that contain a schedule of compliance as determined by the Division. At a minimum, all NOAs shall contain the following:
- (1) Treater information including name of entity; legally responsible person's name, address, telephone number, and email address; and for each facility owned and/or operated by the treater where domestic wastewater is treated for distribution, the facility contact person's name, address, telephone number, and email address (if different than legally responsible person). For the treater NOA, a list of approved users and their associated uses shall be included;
  - (2) Issuance date;
  - (3) The approved uses as defined in Table A of section 84.9, including the category of reclaimed water, and additional conditions for each approved use in subsection 84.9, the associated numeric limit for each use, and requirements from sections 84.7; 84.8, and for localized systems, 84.10;
  - (4) For User NOAs, the location(s) of use, a description of the approved use(s), and best management practices that meet the requirements of subsection 84.12, as applicable;
  - (5) A requirement that the treater implement its reuse system management plan that meets the requirements of subsection 84.6(A)(4) to ensure user compliance with this regulation. For User NOAs, include a requirement that the user comply with the user plan to comply;
  - (6) Where the treater has so requested in the Letter of Intent per Section 84.6(A)(9), conditions defining limitations for concentration and loading of nitrogen and/or phosphorus pursuant to a control regulation adopted by the Water Quality Control Commission.
  - (7) A requirement to submit information to the Division requesting the amendment of a Letter of Intent prior to making any of the following significant changes:
    - (a) Adding an additional user or deleting a user;
    - (b) When a treater proposes any significant physical or operational changes;
    - (c) If reclaimed water is used for irrigation, when there is a significant change in the agronomic rate analysis; and
    - (d) When any user governed by an existing NOA significantly modifies or changes its physical or operational use of reclaimed water, including, but not limited to, the addition of landscape area to be irrigated that is not contiguous to an existing approved area, addition of areas where reclaimed water is to be used for fire protection, addition of a new user or use in a new commercial or industrial process, or use in a new location.



Said request for amending the Letter of Intent shall be made at least thirty days prior to implementing a change described in subsections (a) or (c), above, and at least sixty days prior to implementing a change described by subsections (b) or (d), above.

- (8) Terms for modification, revocation, or termination;
- (9) Required monitoring, as is reasonably necessary, to be performed by the user;
- (10) Reporting and record keeping requirements;
- (11) Public access restrictions, if applicable; and
- (12) A statement of applicable civil and criminal penalties.

#### 84.7 RECLAIMED WATER CATEGORIES AND STANDARDS

- (A) Category 1 Standards: Reclaimed water, for uses where Category 1 water is required, shall, at a minimum, receive secondary treatment with disinfection. The following reclaimed water standards shall apply at the point of compliance:

<u>Parameter</u>	<u>Limit</u>
<i>E. coli</i> /100 ml	126/100 ml monthly geometric mean and 235/100 ml single sample maximum.
Total Suspended Solids	30 mg/L as a daily maximum.

- (B) Category 2 Standards: Reclaimed water, for uses where Category 2 water is required, shall, at a minimum, receive secondary treatment with filtration and disinfection. The following reclaimed water standards shall apply at the point of compliance:

<u>Parameter</u>	<u>Limit</u>
<i>E. coli</i> /100 ml	126/100 ml monthly geometric mean and 235/100 ml single sample maximum.
Turbidity, NTU	Not to exceed 3 NTU as a monthly average and not to exceed 5 NTU in more than 5 percent of the individual analytical results during any calendar month.

- (C) Category 3 Standards: Reclaimed water for uses where Category 3 water is required shall, at a minimum, receive secondary treatment with filtration and disinfection. The following reclaimed water standards shall apply at the point of compliance:

<u>Parameter</u>	<u>Limit</u>
<i>E. coli</i> /100 ml	None detected in at least 75% of samples in a calendar month and 126/100 ml single sample maximum.
Turbidity, NTU	Not to exceed 3 NTU as a monthly average and not to exceed 5 NTU in more than 5 percent of the individual analytical results during any calendar month.

#### 84.8 FILTRATION AND DISINFECTION REQUIREMENTS FOR USE OF RECLAIMED WATER PRODUCED FROM CENTRALIZED SYSTEMS

- (A) The treater must properly operate and maintain all required treatment systems when producing reclaimed water in accordance with this regulation, the NOA, and the site location and design approvals.
- (B) In addition to the factors to be considered and approved by the Division under Regulation #22, the following filtration and disinfection requirements apply to reclaimed water produced from centralized systems specifically for Category 3 uses of indoor toilet and urinal flushing. In the event of a conflict between Regulation #22 and the following filtration and disinfection requirements, the following requirements shall control over any conflicting filtration and disinfection requirements in Regulation #22:
  - (1) In addition to the requirements listed in 84.7(C), the treater must properly operate filtration and disinfection of secondary treated wastewater while producing reclaimed water that reliably achieves all of the following:
    - (a) Disinfection that provides a minimum of 99.999 (5-log) inactivation of enteric viruses by at least one of the following treatment techniques.
      - (i) For free chlorine or monochloramines, log inactivation of viruses to be determined as referenced in 5-CCR-1002-11 and defined by the USEPA for disinfection of surface water (Hepatitis A).
      - (ii) Minimum UV of 40 mJ/cm<sup>2</sup> using a validated reactor per the Ultraviolet Disinfection Guidance Manual for the Final Long Term 2 Enhanced Surface Water Treatment Rule (November 2006).
    - (b) Filtration by any one of the following treatment techniques:
      - (i) Conventional or direct filtration.
      - (ii) Membrane filtration accepted for use by the division in accordance with section 11.8 of 5 CCR 1002-11.(iii) Bag or cartridge filtration accepted for use by the division in accordance with section 11.8 of 5 CCR 1002-11.
      - (iv) Alternative filtration technologies accepted by the Division in accordance with Wastewater Design Criteria Alternative Technology Acceptance that is third party challenge tested to reliably remove 99.9% of challenge particles that are at most 3 micron diameter.
    - (c) The treater must return any recycled spent filter backwash water, thickener supernatant, or liquids from the dewatering process to a location within the treatment process that is before the filtration technology or an alternative Department-approved location.
      - (i) For conventional or direct filtration, the location of return must be prior to the coagulant feed location.(ii) For all other filtration technologies, the location of return must be prior to the filtration process and approved by the Division.

## 84.9 AUTHORIZED RECLAIMED WATER USES

Table A: Approved Uses of Reclaimed Water

Approved Uses	Category	Category	Category	Additional Conditions
---------------	----------	----------	----------	-----------------------

	1	2	3	Required 84.9(A)
INDUSTRIAL				
Evaporative Industrial Processes	Allowed	Allowed	Allowed	1
Washwater Applications	Not Allowed	Allowed	Allowed	2,3,7
Non-Discharging Construction and Road Maintenance	Allowed	Allowed	Allowed	3,7
Non-Evaporative Industrial Processes	Allowed	Allowed	Allowed	7
LANDSCAPE IRRIGATION				
Restricted Access	Allowed	Allowed	Allowed	
Unrestricted Access	Not Allowed	Allowed	Allowed	3,4
Resident-Controlled	Not Allowed	Not Allowed	Allowed	3,4,5
COMMERCIAL				
Zoo Operations	Allowed	Allowed	Allowed	
Commercial Laundries	Not Allowed	Allowed	Allowed	7
Automated Vehicle Washing	Not Allowed	Allowed	Allowed	3,8
Manual Non-Public Vehicle Washing	Not Allowed	Allowed	Allowed	3,8
FIRE PROTECTION				
Nonresidential Fire Protection	Not Allowed	Allowed	Allowed	6
Residential Fire Protection	Not Allowed	Not Allowed	Allowed	6
AGRICULTURAL IRRIGATION				
Non-Food Crop Irrigation and Silviculture	Allowed	Allowed	Allowed	3
TOILET AND URINAL				

FLUSHING				
Toilet and urinal flushing	Not Allowed	Not Allowed	Allowed	5, 9, 10, 11, 12

(A) Additional Conditions Required. In addition to the conditions for use of reclaimed water listed in section 84.9, the Division will include the following best management practices in the NOA for the associated uses listed in Table A:

- (1) If there is a significant likelihood for aerosols to drift to public or worker areas, adequate signage is required. Supplemental disinfection and disinfectant residual and/or public access restrictions are required.
- (2) Washing activities must be contained (e.g., flow to lined pit or approved concrete washout area, or within enclosed equipment), as to prevent any off-site runoff or discharge to ground water. Workers shall be trained on the proper use and washing procedures when using reclaimed water.
- (3) Application rates or other measures shall be employed to minimize ponding on or runoff from the area approved for application or use.
- (4) No reclaimed water piping shall be extended to or supported from any residential structure and there shall be no accessible above grade outlets from the reclaimed water system at any residential structure. At least one exterior hose bib, supplied with potable water, shall be labeled and provided at each residential structure.
- (5) The treater shall develop and implement a public education program to inform residents, workers, plumbing contractors and inspectors who deal with the resident-controlled landscape irrigation systems, or toilet and urinal flushing systems about the need to: a) strictly prohibit cross-connections between the reclaimed water and potable water systems; b) clearly and distinctively identify the potable service lines and plumbing from the reclaimed water service lines and plumbing; and c) avoid contact with and strictly minimize ponding or runoff of the reclaimed water. The treater shall implement a cross-connection inspection program and shall have the authority to discontinue reclaimed water service to any resident or worker who flagrantly or repeatedly misuses reclaimed water in a manner inconsistent with this regulation. The treater shall maintain a map indicating all areas where reclaimed water is provided for resident-controlled landscape irrigation, or toilet and urinal flushing.
- (6) The user shall develop and implement a program, including notices in fire department newsletters and fire department preplans, to educate the public and firefighters that reclaimed water is used for fire protection. The user shall develop a program to educate plumbing and fire protection system contractors and inspectors expected to access the fire protection system about the need to confirm that cross-connections between the reclaimed water and potable water systems do not exist and about the requirement to clearly identify the potable and reclaimed water systems throughout the building. All personnel authorized to use the reclaimed water for fire protection shall be educated to avoid contact with and strictly minimize ponding or runoff of the reclaimed water during non-emergency testing or training. An annual cross-connection inspection shall be made at each structure to which reclaimed water piping is extended for fire protection to ensure that no cross-connection exists. The treater shall maintain a map indicating the location of all fire hydrants, sprinkler systems and standpipe systems provided with reclaimed water.

- (7) Where there is the reasonable potential for worker or public exposure to aerosols generated in the use, users of Category 1 Reclaimed Water (if allowed for the use per Table A) or Category 2 Reclaimed Water shall employ measures to prevent the frequent exposure of workers and the public to aerosols generated in the use of reclaimed water. Measures shall include at least one of the following: minimum setback distance of 100 feet between the nearest source of aerosol generation and areas where workers or the public are normally present; physical barriers between aerosol sources and humans; personal protective equipment to prevent aerosol inhalation; functionally equivalent measures approved by a qualified individual (e.g., a certified industrial hygienist); or other means approved by the Division. Given the higher level of treatment provided for Category 3 Reclaimed Water, additional measures to address exposure of workers or the public to aerosols are not required.
- (8) Where there is the potential for worker or public exposure to aerosols generated in the use, users of Category 2 Reclaimed Water shall employ measures to prevent the inhalation of aerosols from reclaimed water by workers and the public. Measures shall include at least one of the following: personal protective equipment documented to prevent aerosol inhalation; or functionally equivalent measures approved by a qualified individual (e.g., a certified industrial hygienist) and documented to prevent aerosol inhalation.
- (9) Reclaimed water may be used for indoor uses provided that the user adopts and follows best management practices (BMPs) to minimize growth of and worker exposure to *Legionella* and other premise plumbing opportunistic pathogens. BMPs shall be specified in a site-specific operation and maintenance plan as described in section 84.11(C), and shall include at least one of the following:
- (a) Maintenance of a minimum 0.2 mg/L of free chlorine disinfectant or 0.5 mg/L of monochloramine residual if ammonia is present in premise plumbing. The disinfection residual shall be measured at a location at a distance of no greater than 50 feet from the location of use at the distal end or a location that represents the oldest water age within the reclaimed water premise plumbing system. This may require chlorine “boosting” at the point that reclaimed water enters a structure. The monitoring frequency will be no less frequent than once (grab samples) per week. If the disinfectant residual is not in compliance with this requirement, the system must perform operations and maintenance and return all premise plumbing to a minimum 0.2 mg/L disinfection residual for free chlorine or 0.5 mg/L disinfection residual for monochloramine within 24 hours. Exact monitoring locations, and other compliance terms, will be identified in the site-specific operation and maintenance plan submitted as part of the user plan to comply. The system must maintain record of all sampling, locations, and corrective operations for review by the treater or division upon request.
  - (b) An alternative disinfection method as approved by the Division with equivalent protection against premise plumbing pathogens as set forth in section 84.9(A)(9)(a) above. The effectiveness of an alternative disinfection method may be verified by monitoring. The monitoring plan and any requirements for implementation of any Division approved alternative disinfection method must be included in the user plan to comply and the NOA.
  - (c) Where reclaimed water is used for indoor nonpotable uses within a building where plumbing fixtures are accessible by the general public, a monitoring location for disinfection residual at a distance no greater than 50 feet from the location of use at the distal end or a location that represents the oldest water age within the reclaimed water premise plumbing system may be used as an alternate point of compliance for disinfection residual.

- (10) To minimize risk of unintended cross connections, plumbing modifications and repairs shall only be conducted by licensed plumbers. Signage shall indicate that plumbing modifications can only be done by authorized personnel. Signage shall be located where plumbing is accessible.
- (11) Users receiving reclaimed water for use within an occupied premise, must include a backup potable water connection capable of supplying potable water to fixtures for flushing via an air gap should the localized reclaimed water treatment system fail or the reclaimed water is found to be non-compliant or insufficient in volume.
- (12) Users may use reclaimed water for toilet and urinal flushing in multifamily residential structures and in nonresidential structures, only if the toilet and urinal installations are conducted in accordance with article 58 of title 12 [concerning plumbers] and rules promulgated pursuant to that article. Any toilet or urinal installation must conform to article 58 of title 12 and rules promulgated pursuant to that article.

#### **84.10 RECLAIMED WATER TREATMENT REQUIREMENTS FOR LOCALIZED RECLAIMED WATER TREATMENT SYSTEMS**

- (A) Reclaimed water treated by localized reclaimed water treatment systems must comply with the standards and requirements in this section 84.10.
- (B) The treater must properly operate and maintain all required treatment systems when producing reclaimed water in accordance with this regulation, the NOA, and the site location and design approvals. In addition to the factors to be considered and approved by the Division under Regulation #22, localized reclaimed water treatment systems are subject to the following additional design requirements for treatment.
  - (1) The treater must properly operate a multi-barrier treatment approach using filtration and disinfection following secondary treatment while producing reclaimed water that reliably achieves all of the logarithmic ("log") reduction targets for pathogens set forth in Table B below. If a treater conducts its own microbial risk assessment, the treater may request approval from the Division to use alternative log reduction targets based upon the treater's microbial risk assessment.
    - (a) Reclaimed water produced from localized systems for Category 1 uses must meet the design requirements based on a microbial risk assessment using a risk target no less stringent than  $10^{-2}$  infections per person per year only for Enteric Viruses as set forth in Table B below.
    - (b) Reclaimed water produced from localized systems for Category 2 uses must meet the design requirements based on a microbial risk assessment using a risk target no less stringent than  $10^{-2}$  infections per person per year as set forth in Table B below.
    - (c) Reclaimed water produced from localized systems for Category 3 uses must meet the design requirements based on a microbial risk assessment using a risk target no less stringent than  $10^{-4}$  infections per person per year as set forth in Table B below.

Table B: Localized System Log Removal Targets for Treatment Design

	Enteric Viruses	Parasitic Protozoa	Enteric Bacteria
Log <sub>10</sub> Reduction Target ( $10^{-2}$ )	6.0	-	-

Category 1			
Log <sub>10</sub> Reduction Target (10 <sup>-2</sup> ) Category 2	6.0	5.0	4.0
Log <sub>10</sub> Reduction Target (10 <sup>-4</sup> ) Category 3	8.5	7.0	6.0

- (2) The Division will develop policy defining credits for the log reduction of pathogens through various treatment processes.
  - (3) The localized system design requirements will be based on the assumption that the wastewater does not receive meaningful inputs from industrial or other diluting sources.
- (C) Localized System Monitoring Requirements:
- (1) Reclaimed water produced from localized systems must meet the standards for the category of reclaimed water in section 84.7 for the approved use. Compliance with the standards in section 84.7 shall be verified by the monitoring requirements in section 84.10(C)(2) and (3) below.\_
  - (2) Localized reclaimed water treatment systems must be continuously monitored for appropriate process control parameters to demonstrate that systems designed to comply with pathogenic microorganism control are functioning properly. The choice of the type of continuous monitoring technologies to be utilized will be tailored for an individual system and will be included in an operations and monitoring plan. Examples of acceptable forms of continuous monitoring for localized system process control are identified in Table C below:

Table C: Acceptable Surrogate Parameters for Localized Systems

Surrogate Parameter	Surrogate Monitoring Point	Purpose
Chlorine residual	Post-chlorination at a representative location for treatment	Confirm control of opportunistic pathogens
Continuous turbidity or particle size distribution	Post-filtration at a representative location for treatment	Confirm operation of filtration system; can be an indicator of pathogen breakthrough
Pressure decay test	Membrane filtration unit	Measures membrane integrity
Electrical conductivity or tracer spike test; total organic carbon or UV absorbance (254 nanometers)	Reverse osmosis or nanofiltration unit	Can be related to pathogen breakthrough
Continuous color, ultraviolet light absorbance (UVA) or transmittance (UVT), and/or pH	Prior to disinfection or ozonation	Can indicate conditions that inhibit pathogen removal in disinfection or ozonation

		steps
Residual ozone, or oxidation-reduction potential	Ozonated water	Can be correlated to pathogen removal
Continuous ultraviolet (UV) intensity	UV-treated water	Confirm sufficient dose of UV for pathogen inactivation

- (3) The Division shall adopt a policy identifying other acceptable monitoring technologies for localized system treatment processes and means to approve additional monitoring techniques. The operations and monitoring plan shall include a tailored quality assurance plan specific to the continuous monitoring equipment in place. The quality assurance plan may include analysis of periodic grab samples for additional quality assurance of data collected via continuous monitoring, with parameters measured being consistent with those measured via continuous monitoring.
- (D) The treater must return any recycled spent filter backwash water, thickener supernatant, or liquids from the dewatering process to a location within the treatment process that is before the filtration technology or an alternative Department-approved location.
  - (1) For conventional or direct filtration, the location of return must be prior to the coagulant feed location.
  - (2) For all other filtration technologies, the location of return must be prior to the filtration process and approved by the Division.
- (E) Localized reclaimed water treatment systems shall include a flow meter on the localized reclaimed water treatment system and a flow meter on the potable make-up water pipeline to the distribution system.
- (F) Localized reclaimed water treatment systems must be equipped with features that result in a controlled and non-hazardous automatic shutdown of the process in the event of a malfunction. Localized reclaimed water treatment systems must maintain overflow connections to an approved and permitted domestic wastewater treatment works to allow for disposal of off-specification treated reclaimed water or to allow disposal of untreated wastewater during maintenance of the treatment system. Overflow connections will include an approved cross connection control device or method.
- (G) NOAs for use of reclaimed water from localized systems may include requirements for limitations on contributions from non-domestic sources as necessary to prevent pass through, interference, or impacts on public health or the environment from those sources.

#### **84.11 USER PLAN TO COMPLY REQUIREMENTS**

- (A) Landscape irrigation users and agricultural irrigation users shall include the following in a user plan to comply:
  - (1) User information including name of entity; legally responsible person's name; address; telephone number; email address; and site address where reclaimed water will be used;
  - (2) An 8.5" x 11" or an 11" x 17" map or schematic drawing indicating the specific area(s) where irrigation with reclaimed water will take place;



- (3) A description of the best management practices the user intends to implement to ensure that direct and windblown spray and other means of human exposure from irrigation systems will be confined to the areas designated and approved in the notice of authorization;
  - (4) Best management practices the user intends to employ to ensure that application rates shall be controlled to strictly minimize ponding and runoff and to minimize the amount of applied water and associated pollutants that pass through the root zone of the plants to be irrigated (e.g., rain shutoff devices, application at evapotranspiration rates adjusted for irrigation efficiency, daily inspections, or other means); and
  - (5) If applicable, information demonstrating how the user will restrict access to landscaped areas where Category 1 reclaimed water is to be applied either by:
    - (a) Irrigating only during periods approved in the notice of authorization so as to strictly minimize public contact with reclaimed water, or
    - (b) Installing barriers to prevent public access to the site, as approved in the NOA, restricting irrigation to times when the barriers are in place, and ceasing irrigation at least one hour prior to the barriers being totally or partially removed.
  - (6) For resident-controlled landscape irrigation, unless a homeowners' association or other entity acceptable to the Division assumes responsibility, the treater shall be responsible for all information required in the user plan to comply and shall act as the users' legal representative for purposes of certification pursuant to section 84.11(F) below.
- (B) Commercial, industrial, and fire protection users shall include the following in a user plan to comply:
- (1) User information including name of entity; legally responsible person's name; address; telephone number; email address; and site address where reclaimed water will be used;
  - (2) A description of how reclaimed water is to be used;
  - (3) An 8.5" x 11" or 11" x 17' map or schematic showing where such use will occur;
  - (4) The potential for public contact with reclaimed water used in the commercial or industrial operation(s) or process(es);
  - (5) The fate of waste water streams from the commercial or industrial operation or process after use (e.g., discharge to sanitary sewer, lined evaporation/recovery pond, subsequent permitted discharge, or other location);
  - (6) Best management practices the user intends to implement to prevent or minimize direct and windblown spray and other pathways of human exposure to reclaimed water;
  - (7) If applicable, information demonstrating how the user will restrict access to commercial or industrial areas, operations or processes where Category 1 reclaimed water is to be used; and
  - (8) Where reclaimed water is used to supply a fire sprinkler or standpipe system, information describing the user's cross-connection control, prevention and identification program that the user will implement to prevent any cross-connection between the reclaimed water and potable water systems.

- (C) Toilet and urinal flushing users shall include the following in a user plan to comply:
- (1) User information including name of entity; legally responsible person's name; address; telephone number; email address; and site address where reclaimed water will be used.
  - (2) A description of how reclaimed water is to be used.
  - (3) An 8.5" x 11" or 11" x 17' map or schematic showing water system and where use of reclaimed water will occur.
  - (4) Provide description of water systems/flow diagrams, including the potable, non-potable water, and wastewater systems within the building.
  - (5) The user plan to comply shall include an operation and maintenance plan. The operation and maintenance plan shall reflect current conditions, be kept on site, and be available for review by the Division upon request.
  - (6) Signage shall be located where plumbing is accessible, and state that plumbing modifications may only be conducted by licensed plumbers. Signage shall be no smaller than 8.5" x 11" or 11" x 17'.
  - (7) Reclaimed water shall not be used for indoor fixture flushing, if it is stored in an outdoor storage facility exposed to the open atmosphere after treatment.
  - (8) If the Division has approved an alternative disinfection approach as described in section 84.9(A)(9)(b), a user must include in the user plan to comply Division requirements under section 84.9(A)(9)(b) for implementation of alternative approaches for disinfection.
- (D) All users shall include information in their user plan to comply that demonstrates compliance with the following:
- (1) Use of reclaimed water shall be confined to the authorized use area, operation, or process.
  - (2) Precautions shall be taken to ensure that reclaimed water will not be sprayed on any facility or area not designated for application such as occupied buildings, domestic drinking water facilities, or facilities where food is being prepared for human consumption.
  - (3) Notification shall be provided to inform the public that reclaimed water is being used and is not safe for drinking. The notification shall include posting of signs of sufficient size to be clearly read in all use areas, around impoundments, and on tanks, tank trucks and other equipment used for storage or distribution of reclaimed water, with appropriate wording in the dominant language(s) expected to be spoken at the site.
  - (4) All new, modified, or replaced piping, valves, controllers, outlets, and other appurtenances, including irrigation systems and any equipment used for fire protection or in a commercial or industrial operation or process, shall be marked to differentiate reclaimed water from potable water or other piping systems.
  - (5) An approved cross connection control device or method shall be provided at all potable water service connections to reclaimed water use areas.
  - (6) Operation of the reclaimed water distribution or irrigation system, including valves, outlets, couplers, and sprinkler heads, and residential, commercial or industrial facilities

and equipment utilizing reclaimed water, shall be performed only by personnel authorized by the user and trained in accordance with subsection 84.11(E)(11).

- (7) Supplementing reclaimed water with potable water by a user shall not be allowed except through an approved cross connection control device or method. Where an approved cross connection control device or method is used it must be tested on an annual basis by a Certified Cross-Connection Control Technician, unless there is a physical separation (e.g., removal of the connecting pipe, etc.) between the potable and reuse distribution systems. When potable water is used to supplement reclaimed water, the potable water provider must be notified.
  - (8) For indoor uses of reclaimed water, testing shall be completed to detect uncontrolled cross connections by a certified cross-connection control technician prior to initial operation of the system and at intervals thereafter as mandated in the NOA. The user must maintain a current diagram of the structure's potable, reclaimed water, and wastewater plumbing.
  - (9) Supplementing reclaimed water with other non-potable supplies shall not be allowed except through an approved cross connection control device or method. An approved cross connection device or method shall be provided at all service connections between reclaimed water and other non-potable water sources including but not limited to water from irrigation wells, industrial wells, or graywater.
  - (10) There shall be no impoundment or irrigation of reclaimed water within 100 feet of any well used for domestic supply unless:
    - (a) In the case of an impoundment, the impoundment is lined with a synthetic material with a permeability of 10<sup>-6</sup> cm/sec or less; or
    - (b) In the case of irrigation, other precautions are implemented and included as a condition of the notice of authorization, to prevent contamination of the well.
  - (11) Workers shall be informed of the potential health hazards involved with contact or ingestion of reclaimed water and shall be educated regarding proper hygienic procedures to protect themselves.
  - (12) The additional conditions included in section 84.9, as applicable.
  - (13) For chlorine disinfection or alternative disinfection approaches approved under 84.9(A) (9), the user plan to comply shall identify the person responsible (e.g. user or treater) for monitoring disinfection at the point of compliance and operation and maintenance of the chlorine boosting system or the alternative disinfection method.
- (E) Users supplied by localized reclaimed water treatment systems shall include the following in a user plan to comply:
- (1) Protocol to switch to potable water and redirect reclaimed water to the sanitary sewer system no later than 12 hours after receipt of the results of any water quality test sample that does not meet the water quality requirements of the NOA or indication of a process malfunction based on continuous monitoring. Systems required to redirect reclaimed water to the sanitary sewer may resume normal operation after the Division receives a letter explaining why the performance was compromised and what actions were taken to prevent it from reoccurring, and three (3) consecutive days of data showing compliance, and the Division issues an approval to resume operations.

- (2) An affidavit by the user attesting to the employment of a certified operator or a service contract with a certified operator, who meets the requirements of Regulation 100.
  - (3) An enforceable legal agreement defining the roles and responsibilities of the user and treater.
  - (4) If required, the user shall identify the percentage contributions from each wastewater input to the localized system and the location of the input, and any limitations on contributions from non-domestic sources as necessary to prevent pass through, interference, or impacts on public health or the environment from those sources.
  - (5) All other requirements in section 84.11(A), (B), and (C) that apply to the use of reclaimed water from the localized system, as well as all requirements in 84.11(D).
- (F) Each user plan to comply shall include a statement signed by the user, or a legal representative of the user, that certifies:
- (1) The user has been provided a copy of this regulation and agrees to comply with the applicable requirements of this regulation, in particular the Conditions for Use of Reclaimed Water described in sections 84.8, 84.9, 84.10 and 84.11, the NOA and user plan to comply, and, if applicable, the access restrictions when Category 1 reclaimed water is used. The user shall submit a certification statement per section 84.15 of this regulation with the information provided in this item; and
  - (2) The user agrees to allow the treater or the Division reasonable access to the site to determine whether the user is in compliance with this regulation, the NOA and user plan to comply, and/or to perform monitoring and analysis as may be required in section 84.10(A)(3) for localized systems, and section 84.12.
  - (3) For indoor uses of reclaimed water, the user has had a certified cross-connection control technician complete a test to detect uncontrolled cross connections.

#### **84.12 MONITORING, RECORD KEEPING AND REPORTING**

- (A) Treaters and users operating pursuant to a notice of authorization shall be subject to such monitoring, record keeping, and reporting requirements as may be reasonably required by the Division to ensure compliance with the requirements of this regulation, and the NOA, including, but not limited to the following:
- (1) For treaters: the quality of reclaimed water produced and delivered at the point(s) of compliance, inspections of a representative number and type of user sites to determine user compliance, and self-certifications submitted to the treater by users.
  - (2) For each user, the total volume of reclaimed water used per year. For Landscape Irrigation Users and Agricultural Irrigation Users, each location with the associated acreage where reclaimed water was applied.
  - (3) For each user using Category 1 reclaimed water, confirmation that reclaimed water was used only during authorized use times (if applicable).
- (B) Treaters shall provide an annual report to the Division for the previous year, by March 31st, that includes the following:

- (1) Information demonstrating the treater's compliance with the reclaimed water standards, including applicable treatment requirements described in section 84.7, 84.8, 84.9 and for localized systems, 84.10 of this regulation.
  - (2) Confirmation that the treater conducted inspections pursuant to section 84.12(A)(1) above.
  - (3) Violations of this regulation by users pursuant to section 84.12(C)(1), below.
  - (4) A certification statement by the treater as per section 84.15 below regarding the information provided by the treater in subsections (1) and (2) above.
  - (5) Information supplied by users to the treater demonstrating compliance with the conditions applicable to each specific user included in the notice of authorization.
  - (6) Certification statements from each user as per section 84.15 below regarding the information provided in subsection (5) above.
- (C) The treater and users shall report any violations as follows:
- (1) Violations of this regulation and/or notices of authorization at their respective facilities in writing to the Division, within thirty days of becoming aware of the violation. Where the treater finds violations by a user, the thirty day period for reporting is waived for a period of up to thirty additional days, if the treater is working with the user to resolve the violation. If the violation is resolved, no separate notice to the Division is required except that the violation is to be reported in the treater's annual report. If the violation is continuing after a total of sixty days from the time the treater became aware of the violation, the treater shall report the violation to the Division within five working days. Nothing in this section precludes a user from reporting violations by a treater to the Division.
  - (2) For more serious violations (including non-permitted discharges to surface waters, uncontrolled cross-connections, exceedances of the reclaimed water standards for E. coli, turbidity, secondary standards, continuous proper operations and maintenance of treatment systems while producing reclaimed water, the NOA, conditions of the site location and design approvals, or other violations posing an immediate threat to public health or the environment): orally to the Division within 24 hours of becoming aware of the violation, followed up by a written report within five working days. The written report shall contain a description of the noncompliance, including exact dates and times; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

### **84.13 VARIANCES**

The Division may grant a variance from any provision of this regulation, except that with respect to the E.coli standards in section 84.7, a variance may only be granted from the "235/100 ml single sample maximum" standard. The Division may grant a variance in a particular case where the treater or the user demonstrates that the benefits to public health or the environment that will be created by compliance with the subject provision do not bear a reasonable relationship to the costs required to achieve compliance.

### **84.14 ENFORCEMENT**

Violations of this regulation by treaters and users shall be subject to enforcement by the Division pursuant to Part 6 of the CWQCA. A treater shall not be subject to enforcement for a violation by a user; a user shall be solely responsible for its compliance with the terms and conditions imposed upon users.

However, if the treater was aware of a violation by a user and did not report it as required in subsection 84.12(C), the treater may be subject to an enforcement action for failure to report the violation. A user shall not be subject to enforcement for a violation by a treater; a treater shall be solely responsible for its compliance with the terms and conditions imposed upon treaters. However, if a user was aware of the violation and did not report it as required in subsection 84.12(C), the user may be subject to an enforcement action for failure to report the violation.

#### **84.15 CERTIFICATION**

Persons who are required to make submittals pursuant to subsections 84.6(A)(5), 84.11(F), and 84.12(B) (6) of this regulation, shall include the following certification statement:

"I certify, under penalty of law, that the information I am providing in this submittal is true, accurate, and correct. This determination has been made under my direction and supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

#### **84.16 - 84.20 Reserved**

....

#### **84.26 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY AND PURPOSE: AUGUST 6, 2018 RULEMAKING; EFFECTIVE NOVEMBER 6, 2018**

The provisions of sections 25-8-202, 25-8-205(1), and 25-8-205.8, C.R.S., provide the specific statutory authority for adoption of amendments to this regulation. The Commission also adopted, in compliance with section 24-4-203(4), C.R.S., the following statement of basis and purpose.

#### **BASIS AND PURPOSE**

On April 30, 2018, House Bill 18-1069 was enacted, essentially codifying Regulation 84 provisions such as category standards 1 through 3 and the pre-existing allowed uses of reclaimed water for categories 1 through 3. The primary purpose of House Bill (HB) 18-1069 was to add toilet and urinal flushing in multifamily residential and nonresidential structures as category 3 uses for reclaimed domestic wastewater. The Bill becomes effective on August 8, 2018.

Prior to the enactment of HB 18-1069, the Commission noticed a regulatory proposal by Denver Water to modify Regulation #84 to add toilet and urinal flushing ("fixture"), indoor cannabis irrigation, and adopt new standards for reclaimed water treatment for certain types of treatment systems. Denver Water subsequently withdrew its proposal to add indoor cannabis irrigation to Regulation #84 from consideration. Denver Water and the Division also submitted a motion for consideration of a joint proposal to modify Regulation #84.

On August 6, 2018, the Commission held a rulemaking hearing to consider the joint proposal presented by Denver Water and the Division, for modification of Regulation#84. Following the rulemaking hearing, the Commission updated Regulation #84 to add fixture flushing consistent with the specific definitions and requirements contained in HB 18-1069. The Commission also adopted new definitions and treatment requirements for two types of reclaimed water treatment systems: "centralized reclaimed water treatment systems" (centralized systems) and "localized reclaimed water treatment systems" (localized systems) to further encourage the reuse of reclaimed domestic wastewater and ensure protection of public health. In addition, the Commission adopted a statutory definition of "point of compliance"; described treatment, filtration, and disinfection requirements for centralized systems producing category 3 reclaimed water for toilet flushing; adopted a log reduction treatment approach for localized treatment systems with monitoring requirements for localized systems to ensure that these systems are operating correctly; and

additional cross-connection control requirements for uses of reclaimed water used for indoor non-potable uses.

#### A. Definition of Point of Compliance

The Commission modified the definition of point of compliance to conform with the new statutory definition of point of compliance adopted in HB 18-1069. The definition provides that the point of compliance “means, except as provided in subsection (1)(f)(II) of this section, a point, as identified by the person that treats the water in the reclaimed domestic wastewater treatment process or the reclaimed domestic wastewater transportation process, that occurs after all treatment has been completed but before dilution and blending of the water has occurred.” Subsection (1)(f)(II) provides that “If reclaimed domestic wastewater is used for indoor nonpotable uses within a building where plumbing fixtures are accessible by the general public, ‘point of compliance’ is at the location where water is delivered to the occupied premises.”

Subsection (1)(f)(I) and (II) in HB 18-1069 refer to the categories of reclaimed water (categories 1 through 3) and the standards that must be met regarding total suspended solids, turbidity and *E. coli*. The Commission construed subsection (1)(f)(II) as applying to the disinfection residual. Disinfection residual is a best management practice used to prevent regrowth of waterborne pathogens within indoor plumbing systems. It is not practical from an operational, economic or implementation standpoint to continuously test for *E. coli* at buildings using reclaimed water indoors, but meeting the disinfection residual requirements at the building is practical and will protect public health. The treatment facility supplying the reclaimed water will meet the statutory and regulatory standards after treatment and before dilution and blending.

To protect against potential regrowth of opportunistic pathogens and increases in turbidity in the underground distribution system prior to entering a building, Regulation 84.9(A)(9)(a-c) requires that users follow a best management practice of monitoring for disinfectant residual and/or another approved disinfection methods for indoor uses of reclaimed water, which monitoring may occur at the distal end of the plumbing system. These treatment approaches are intended to prevent growth of opportunistic pathogens, such as *legionella* from proliferating within building plumbing pipes and fixtures. Meeting the residual requirements at the distal end of the plumbing system will protect public health from opportunistic pathogens within buildings as an additional protective measure.

With regard to the point of compliance for localized systems, the point of compliance will be a point, as identified by the treater, in the reclaimed domestic wastewater treatment process or the reclaimed domestic wastewater transportation process, that occurs after all treatment has been completed but before dilution and blending of the water has occurred. The Commission finds that in most cases localized systems will be located at or near the tap of the building, parcel, or district where domestic wastewater is being treated and used. This means that it is less likely that the disinfection residual in reclaimed water produced from localized systems will dissipate due to the shorter travel time for reclaimed water from localized systems to the point of use. In addition, for localized systems there is continuous monitoring of the process system to confirm log removal targets are being met. For these reasons, the point of compliance for disinfection residual for localized systems located near the site of use may also be at the point identified by the treater that occurs after all treatment has been completed but before dilution and blending of the water has occurred.

#### B. Definitions of Centralized Systems and Localized Systems

The Commission adopted definitions for centralized and localized reclaimed water treatment systems; defined treatment, filtration, and disinfection requirements for centralized systems producing Category 3 reclaimed water for fixture flushing; and adopted a new log reduction treatment approach and control monitoring framework for localized systems to track whether the treatment control system is operating to meet *E. coli* and turbidity requirements.

##### Centralized Systems

Regulation 84 previously did not define “reclaimed water treatment systems” or “centralized reclaimed water treatment systems”. Rather, reclaimed water treatment systems were encompassed by the definition of “treater” and the definition of “reclaimed water”. The adoption of the definition of “centralized reclaimed water treatment systems” is intended to encompass the reclaimed water treatment systems that would have been defined as a “treater” or “reclaimed water” in the original, 2000 version of Regulation #84.

To distinguish centralized systems from localized systems, the Commission adopted a definition of “centralized reclaimed water treatment systems” that define such systems as receiving domestic wastewater from a diverse service area for treatment to produce reclaimed water for beneficial use where the service area has meaningful inputs from industrial or other diluting sources. The phrase “meaningful inputs or other diluting sources” relates to the consistent watering down of waterborne pathogens in the untreated source water consistent with large municipal-like collection systems.

The Commission adopted filtration standards for reclaimed water produced from centralized systems for toilet flushing based upon a multi-barrier approach. California Title 22 establishes a framework for multiple barrier framework supported by a microbial risk assessment (“MRA”). The Commission found the California treatment recommendations to be too limiting for the expansion of reuse in Colorado and has allowed a wider range of filtration techniques that provide equivalent microbial protections appropriate for indoor reuse application. The Commission concluded that there should be a defined list of technologies allowed for Category 3 reclaimed water used for toilet flushing because of the higher risk of public exposure to reclaimed water from unintended cross-connections. All types of filtration are not adequate for pathogen reduction for indoor uses of reclaimed water. However, the Commission has listed accepted filtration technologies which include any filter approved per 5CCR 1002-11 and the ability to challenge test and demonstrate reclaimed water specific filtration techniques.

The Commission agreed with the California Title 22 minimum requirement of 5 log virus treatment for indoor uses of reclaimed water. The Commission found that the virus inactivation tables published by the EPA are appropriate when chemical disinfection is used. If UV disinfection is employed, virus disinfection should be measured against Hepatitis A for chemical disinfection or 40 mJ/cm<sup>2</sup> for ultraviolet light disinfection.

The Commission adopted a new section 84.8, which describes the filtration and disinfection requirements for centralized reclaimed water being used for fixture flushing. The Commission also adopted definitions of filter technologies, including bag filter and cartridge filter, conventional filtration, direct filtration, and membrane filtration. To add clarity regarding the meaning of treatment standards, the Commission adopted definitions for secondary treatment and treatment technique requirements.

The Commission directed the Division to hold a stakeholder process with reclaimed water users, treaters and other interested parties to consider whether similar or alternative treatment techniques should be applied to other categories of reclaimed water and authorized uses.

#### Definition of Localized Systems

Localized reclaimed water treatment systems are defined by several characteristics that distinguish them from centralized systems. Specifically, localized systems:

- receive and treat domestic wastewater that does not have meaningful inputs from industrial and other diluting sources.
- are located relatively close to the location where wastewater is generated meaning that there is little travel time for wastewater, and less time for pathogen die off to occur.

These factors contribute to more concentrated raw wastewater, and therefore higher pathogen loads in the domestic wastewater treated by localized systems.



To address the distinct characteristics of localized systems, the Commission defined “localized reclaimed water treatment systems” as systems that receive and treat domestic wastewater from a single building, multiple buildings within a single property or area bounded by dedicated streets or ways, or a district designated by a City or County for treatment to produce reclaimed water for beneficial use where the source water does not have meaningful inputs from industrial or other diluting sources. This definition is intended to reflect that localized systems collect wastewater from a more concentrated and defined area as compared to centralized systems.

The Commission adopted a new rule providing that NOAs for use of reclaimed water from localized systems may include requirements for limitations on contributions from non-domestic sources as necessary to prevent pass through, interference or impacts on public health or the environment from those sources. The Commission also adopted a requirement that the user plan to comply for localized systems identify the percentage contributions from each wastewater input to the localized system and the location of the input as well as any limitations on contributions from non-domestic sources.

#### Treatment Based Framework for Localized Systems

The Commission also adopted a treatment-based framework for localized systems. The framework for localized systems is structured around treatment performance criteria. A treatment-based approach for localized systems helps ensure that systems are designed properly, that public health will be protected despite less frequent sampling and higher degrees of automation, and helps streamline permitting for a variety of small treatment systems throughout the state.

The treatment-based approach utilizes treatment performance-based logarithmic (“log”) reduction targets for the treatment of pathogens in localized systems to meet various risk thresholds. The Commission directs the division to develop a policy (localized system design criteria) that will define treatment credits for various unit processes or alternate demonstration/testing option while discharging to the sewer. Treatment-based approach allows for an automated approach through continuous monitoring, and avoids the need to perform frequent grab samples for *E. coli*, a cost burden that provides little benefit for assessing how localized systems perform in real time.

The Commission considered two different risk levels for localized system log removal targets, and concluded that due to the high risk of unintended cross-connections between potable and reclaimed water plumbing,  $10^{-4}$  risk level (1 infection per 10,000 individuals annually) is appropriate for localized systems treating reclaimed water for Category 3 uses. The Commission concluded that  $10^{-2}$  risk level (1 infection per 100 individuals annually) is appropriate for localized systems treating reclaimed water only for Category 2 uses due to the low risk of exposure from unintended cross connections. The Commission also approved  $10^{-2}$  risk level for enteric viruses only for localized systems treating reclaimed water only for Category 1 uses, again due to the low risk of exposure from unintended cross connections and restricted access limits for on-site uses.

Because localized systems generally lack access to on-site laboratories and more limited staffing, the Commission adopted requirements for continuous treatment monitoring of unit processes with high frequency (on the order of minutes between sample analysis and recording) to ensure those processes are operating to specification. The Commission found that localized systems should be continuously monitored to ensure that treatment is performing as expected.

The Commission decided that localized reclaimed water system treaters should not be required to continuously monitor for *E. coli* because localized systems that treat to the log removal targets adopted by the Commission will meet the *E. coli* limits in section 84.7, so long as the localized system process controls are operated and maintained in accordance with their design as verified by the monitoring of the unit processes. The Commission found that the continuous treatment monitoring process, as well as the initial field verification, will verify that the log removal targets are being met, and that the localized system is meeting the required log removal targets and therefore in compliance with the *E.coli* standard for Categories 1, 2 and 3 reclaimed water. For these reasons, the Commission determined it is not necessary for localized systems to consistently monitor for *E.coli*. Acceptable surrogate parameters for

localized systems listed in Table C of Section 84.10, if operating properly and continuously monitored and verified, will result in the log reduction targets in Table B in 84.10 and meet or exceed the standards provided in Categories 1, 2 and 3 of reclaimed water. The Commission approved several surrogates in Table C for monitoring the operation of system process control, and directed the Division to develop a policy approving other acceptable surrogates for continuous monitoring of localized systems.

The type of continuous monitoring should be selected on a system-by-system basis. During the field verification and commissioning study, the treater must confirm that the treatment technologies have been installed in accordance with the approved design and are operating per their specifications. The monitoring approach will be included in the operations and monitoring plan.

The Commission currently intends for localized systems, like centralized systems, to be approved under the site location and design approval process in Regulation 5 CCR 1002-22, and encourages the Division to hold a stakeholder process to consider modifications to Regulation 22 to consider any changes that should be made to address localized systems.

The Commission also adopted a requirement providing that a user include as part of its user plan to comply an affidavit attesting that the user employs a certified operator or an agreement showing that a certified operator has been retained. The Commission determined that this is necessary to ensure that the user is capable of operating the localized system and able to comply with Regulation #84. The report must be certified by the user.

To protect water provider water rights, the Commission adopted language requiring that letters of intent include an affirmation that the proposed installation of a localized system is allowed by the water service provider where the localized system is located in the service area of a water provider.

#### C. Basis of Requirements for Fixture Flushing

##### Risk of Exposure to Reclaimed Water from Fixture Flushing

The Commission approved reclaimed water for fixture flushing in multi-family and non-residential structures. The primary risk of exposure to reclaimed water when used for toilet flushing is from unintended cross-connections with potable water plumbing. To minimize risk of exposure to reclaimed water from unintended cross-connections with potable water plumbing, the Commission adopted additional disinfection requirements and cross-connection control requirements.

##### Disinfection Requirement for Toilet and Urinal Flushing Using Centralized and Localized System Reclaimed Water

A BMP of a minimum of 0.2 mg/L for free or 0.5 mg/L for monochloramines of chemical disinfectant is required within the reclaimed water of premise plumbing of buildings approved for indoor toilet and urinal flushing. This BMP mitigates the potential for *Legionella* exposure associated with indoor uses. The Division may approve alternative disinfection approaches that have equivalent protection against premise plumbing pathogens. The Commission directs the Division to hold a stakeholder process to determine whether similar or different disinfection requirements should be applied to other categories of indoor uses for reclaimed water. The commission also discussed the importance of ensuring a maximum amount of chlorine residual is not exceeded for indoor uses, especially in light of the potential for chlorine boosting to be occurring. The commission felt that the maximum levels required by the International Plumbing Code address the issue, however the commission expects that during the development of future changes to this regulation, the division and stakeholders will consider whether the addition of a maximum chlorine residual level is necessary in this regulation.

##### Cross Connection Control Requirements for Toilet Flushing

The Commission included a requirement providing that only licensed plumbers may perform maintenance or make modifications to plumbing within structures that use reclaimed water for toilet flushing. Structures using reclaimed water for toilet flushing must maintain signage providing notice that modifications may be performed only by licensed plumbers.

The Commission determined that structures that use reclaimed water indoors must have an approved cross connection control device or method to prevent contamination of potable water distribution systems also serving the structures. In addition, the owner of the structure using reclaimed water for toilet or urinal flushing must conduct testing to detect uncontrolled cross connections by a certified cross-connection control technician prior to initial operation of the system and at intervals thereafter as mandated in the notice of authorization. Additionally, where reclaimed water is used indoors and could be cross connected with other non-potable water supplies, devices must be installed at service connections to protect the higher quality water from accidental contamination from the lower quality water source.

The user must maintain a current diagram of the structure's potable and reclaimed water plumbing. The public should not have access to the plumbing within structures that use reclaimed water indoors. Structures using reclaimed water for fixture flushing must be in compliance with the State Plumbing Code promulgated by the Colorado State Plumbing Board.

The Commission adopted a rule clarifying that use of reclaimed water for indoor fixture flushing is prohibited if after treatment reclaimed water is stored in an outdoor open-air storage structure.

#### Additional Requirements for Fixture Flushing

To protect public health and ensure a continuity of water supply, the Commission determined that users of reclaimed water for toilet flushing must maintain a backup potable water supply connection in the event of upsets or a failure of a localized reclaimed water treatment system or centralized reclaimed water treatment system.

The Commission also adopted a requirement that users have a protocol to switch to potable water and redirect reclaimed water to the sanitary sewer in the event that the reclaimed water is not in compliance with Regulation #84.

#### D. House Bill 18-1069

The Commission finds that its modifications to Regulation #84 are consistent with the intent of HB 18-1069, and presents no increase in the potential risk to human health or the environment. The Commission also found that its modifications further facilitate the safe and efficient use of Colorado's limited water resources.

The addition of the use of reclaimed water for toilet and urinal flushing as a Category 3 Standard is authorized by HB 18-1069. This bill authorizes reclaimed domestic wastewater to be used for indoor toilet and urinal flushing if the reclaimed water meets the Category 3 Standard. HB18-1069, Section 3(2)(c) (IV); § 25-8-205.7(2)(c)(IV), C.R.S.

The Commission further found that the bifurcated designation of reclaimed water treatment systems is also within the authority granted by HB18-1069. The bill amends the previous statutory definition of "reclaimed domestic wastewater". HB18-1069, Section 1; § 25-8-103(17.5), C.R.S. However, the bill does not define the reclaimed water treatment systems that would produce reclaimed domestic wastewater. Control regulations may be promulgated to describe requirements and standards that will encourage the reuse of reclaimed domestic wastewater. See HB-1069, Section 2(1)(f); § 25-8-205(1)(f), C.R.S. Centralized systems are the default reclaimed water systems that were encompassed by the prior Regulation 84 definition of "treater". The Commission found that the addition of "localized systems" as another type of treatment system that would also produce reclaimed domestic wastewater would encourage the use of reclaimed domestic wastewater, consistent with the declaration in HB 18-1069.

The other substantive changes to the regulation describe treatment, filtration, disinfection, monitoring, and other technical requirements. The Commission determined that the addition of these requirements are consistent with the authority granted by HB18-1069. The bill requires wastewater to “at a minimum” receive secondary treatment with filtration and disinfection in order to meet a Category 3 Standard.

HB18-1069, Section 3, subsection (1)(c)(I); § 25-8-205.7(1)(c)(I), C.R.S. However, the bill does not define “secondary treatment,” “filtration,” or “disinfection”. It also does not define or describe the monitoring or technical requirements necessary to ensure reclaimed water meets the requirements for each Category Standard. Control regulations may be promulgated to describe requirements and standards that will protect public health and encourage public use. See HB-1069, Section 2(1)(f); §25-8-205(1)(f), C.R.S. The Commission finds that the requirements adopted herein concerning treatment, filtration, disinfection, monitoring, and other technical requirements strike a proper balance between the objectives of protecting public health and encouraging the reuse of domestic wastewater.

#### PARTIES TO THE RULEMAKING

1. Denver Water
  2. City and County of Denver
  3. Aurora Water Department
  4. City of Boulder
  5. Marijuana Industry Group
  6. LivWell Enlightened Health
  7. Cannabis Business Alliance
  8. Meridian Metropolitan District
  9. Metro Wastewater Reclamation District
  10. Sand Creek Metro District
  11. WateReuse Colorado
-

**CYNTHIA H. COFFMAN**  
Attorney General

**MELANIE J. SNYDER**  
Chief Deputy Attorney General

**LEORA JOSEPH**  
Chief of Staff

**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000

**Office of the Attorney General**

Tracking number: 2018-00153

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

Water Quality Control Commission (1002 Series)

**on 10/09/2018**

5 CCR 1002-84

**REGULATION NO. 84 - RECLAIMED WATER CONTROL REGULATION**

The above-referenced rules were submitted to this office on 10/10/2018 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 23, 2018 09:41:40

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General

## **Permanent Rules Adopted**

### **Department**

Department of Public Health and Environment

### **Agency**

Division of Environmental Health and Sustainability

### **CCR number**

6 CCR 1010-17

### **Rule title**

6 CCR 1010-17 UREA FORMALDEHYDE FOAM INSULATION 1 - eff 11/30/2018

### **Effective date**

11/30/2018

**[Publication Instructions: Repeal entire current existing rule, 6 CCR 1010-17.]**

**~~DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT~~**

**~~Division of Environmental Health and Sustainability~~**

**~~UREA FORMALDEHYDE FOAM INSULATION~~**

**~~6 CCR 1010-17~~**

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

---

**~~RULES~~**

**~~1. Definitions~~**

- ~~(a) <sup>a</sup>Toxic<sup>o</sup> - in accordance with C.R.S. 1973, 25-5-502(20), is defined as any substance which has the capacity to produce personal injury or illness to man through ingestion, inhalation or absorption through any body surface.~~
- ~~(b) <sup>a</sup>Strong sensitizer<sup>o</sup> - in accordance with C.R.S. 1973, 25-5-502(18), is defined as any substance which will cause, on normal living tissue, through an allergic or photodynamic process, a hypersensitivity which becomes evident on reapplication of the same substance.~~
- ~~(c) <sup>a</sup>Irritant<sup>o</sup> - in accordance with C.R.S. 1973, 25-5-502(12), is defined as any substance which on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction.~~
- ~~(d) <sup>a</sup>Hazardous substance<sup>o</sup> - in accordance with C.R.S. 1973, 25-5-502(10)(a), is defined as any substance or mixture of substances which is toxic, corrosive, an irritant or a strong sensitizer.~~
- ~~(e) <sup>a</sup>Urea Formaldehyde Foam Insulation<sup>o</sup> - means a cellular plastic product which is manufactured at the job site by mixing two liquid chemicals - urea formaldehyde-based resin and a foaming agent - and generally, pressurized air, through a foaming equipment system. The resultant mix has a shaving cream-like consistency and is usually pumped through a relatively small hole into the walls of standing structures. After it is in the wall, the product cures and becomes firm and self-supporting.~~
- ~~(f) <sup>a</sup>Manufacturer of UFFI<sup>o</sup> - means the installer who combines the component materials and foams the insulation into its permanent location.~~

~~(g) <sup>a</sup>Contracts of Sale<sup>o</sup> means any invoice, sales agreement, contract for service, offer to sell or install, or other document that specifies price and terms of the service and/or merchandise to be provided in insulating a building with urea formaldehyde foam.~~

~~2.~~

~~(a) Formaldehyde, urea formaldehyde resin and urea formaldehyde foam insulation are declared to be hazardous substances.~~

~~(b) Formaldehyde, urea formaldehyde foam insulation and urea formaldehyde resin are declared to be irritants.~~

~~(c) Formaldehyde, urea formaldehyde resin, and urea formaldehyde foam insulation are declared to be toxic substances.~~

~~(d) Formaldehyde, urea formaldehyde resin and urea formaldehyde foam insulation are declared to be strong sensitizers.~~

~~3. The future installation of UFFI is forbidden in any school, nursery or any institution required to be licensed under C.R.S. 1073, 25-3-1.01.~~

~~4.~~

~~(a) Before the manufacturer installs UFFI he shall provide to the purchaser or prospective purchaser the warning required in those rules.~~

~~(b) The manufacturer of UFFI shall include the warning statement on all contracts of sale of UFFI. If the manufacturer does not present a written contract of sale to the prospective purchaser, then the warning shall appear on a receipt of the transaction or on a document relating to the credit transaction regarding the sale of UFFI that gives the seller a security interest in the purchaser's real property. If the manufacturer does not present any of these documents, then the warning shall appear on a separate piece of paper.~~

~~(c) The warning shall read as follows:~~

~~WARNING~~

~~THIS PRODUCT MAY RELEASE FORMALDEHYDE GAS OVER A LONG PERIOD OF TIME. FORMALDEHYDE GAS MAY CAUSE EYE, NOSE, AND THROAT IRRITATION, COUGHING, SHORTNESS OF BREATH, SKIN IRRITATION, NAUSEA, HEADACHES AND DIZZINESS. PEOPLE WITH RESPIRATORY PROBLEMS OR ALLERGIES MAY SUFFER MORE SERIOUS REACTIONS, ESPECIALLY PERSONS ALLERGIC TO FORMALDEHYDE.~~

~~● The symptoms may appear immediately or not until months after installation.~~



~~● Use of the insulation in attics, ceilings and interior walls increases the likelihood of releasing formaldehyde gas into your home. In some instances, the formaldehyde gas cannot be controlled by ventilation or other inexpensive means.~~

~~● If you have health concerns, call your doctor. Also, contact (installer phone) or (material supplier phone) immediately.~~

~~(d) The warning shall appear prominently and conspicuously. It shall be printed in legible, bold face type. If the contract of sale, receipt, document related to a credit transaction, or separate piece of paper provides for a signature of the purchaser, then the warning shall appear on the same page as the signature of the purchaser and before the signature of the purchaser.~~

~~(e) The manufacturer shall not be deemed to have met the requirements of this section if the manufacturer provides the prospective purchaser or purchaser with any oral or written statement that in any manner negates or disclaims the warning required by this section.~~

~~5. These rules and regulations are not intended to preempt local authorities from adopting regulations which are more stringent than these rules.~~

---

## **Editor's Notes**

## **History**

**CYNTHIA H. COFFMAN**  
Attorney General

**MELANIE J. SNYDER**  
Chief Deputy Attorney General

**LEORA JOSEPH**  
Chief of Staff

**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000

**Office of the Attorney General**

Tracking number: 2018-00405

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

Executive Director Department of Public Health & Environment

**on 10/02/2018**

6 CCR 1010-17

UREA FORMALDEHYDE FOAM INSULATION [Repealed eff. 11/30/2018]

The above-referenced rules were submitted to this office on 10/04/2018 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 17, 2018 13:05:05

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General

## **Permanent Rules Adopted**

**Department**

Department of Labor and Employment

**Agency**

Division of Oil and Public Safety

**CCR number**

7 CCR 1101-9

**Rule title**

7 CCR 1101-9 EXPLOSIVES REGULATIONS 1 - eff 12/01/2018

**Effective date**

12/01/2018

**COLORADO DEPARTMENT OF  
LABOR AND EMPLOYMENT**

**DIVISION OF OIL AND PUBLIC SAFETY**

**EXPLOSIVES REGULATIONS**

**7 C.C.R. 1101-9**

**Effective: December 1, 2018**



## Table of Contents

<b>ARTICLE 1</b>	<b>GENERAL PROVISIONS.....</b>	<b>5</b>
Section 1-1	Basis and Purpose .....	5
Section 1-2	Statutory Authority .....	5
Section 1-3	Effective Date .....	5
Section 1-4	Scope .....	5
Section 1-5	Definitions .....	6
<b>ARTICLE 2</b>	<b>GENERAL REQUIREMENTS .....</b>	<b>16</b>
Section 2-1	Miscellaneous Requirements .....	16
<b>ARTICLE 3</b>	<b>EXPLOSIVES PERMIT .....</b>	<b>17</b>
Section 3-1	Basic Legal Obligations .....	17
Section 3-2	General Requirements .....	17
Section 3-3	Revocation, Suspension, or Denial of Permits .....	17
Section 3-4	Procedure on Denial, Suspension, or Revocation of Explosives Permit .....	19
Section 3-5	Permit Types and Classifications .....	20
3-5-1	Type I Permit.....	20
3-5-2	Type II Permit.....	22
3-5-3	Type III Storage Permit .....	23
Section 3-6	Permit Application .....	23
Section 3-7	Protection and Exhibition of Permits .....	25
Section 3-8	Records of Transactions .....	26
3-8-1	Manufacturer .....	26
3-8-2	Dealer.....	26
3-8-3	Type II Permit.....	27
3-8-4	Type I Permit.....	27

Section 3-9	Permit Changes .....	27
Section 3-10	Explosives Sales to Permittees.....	27
<b>ARTICLE 4</b>	<b>STORAGE OF EXPLOSIVE MATERIALS .....</b>	<b>29</b>
Section 4-1	General Requirements .....	29
Section 4-2	Classes of Explosive Materials and Examples .....	32
Section 4-3	Summary of Storage Requirements.....	32
Section 4-4	Storage Magazine Construction by Type.....	33
4-4-1	Type 1 Storage.....	33
4-4-2	Type 2 Storage.....	35
4-4-2-1	Outdoor Magazines.....	35
4-4-2-2	Indoor Magazines.....	35
4-4-3	Alternate Construction Standards for Storage Facilities .....	36
4-4-4	Type 3 Storage.....	37
4-4-5	Type 4 Storage.....	38
4-4-5-1	Outdoor Magazines.....	38
4-4-5-2	Indoor Magazines.....	38
4-4-6	Type 5 Storage.....	39
4-4-6-1	Outdoor Magazines.....	39
4-4-6-2	Indoor Magazines.....	40
Section 4-5	Location of Magazines .....	40
<b>ARTICLE 5</b>	<b>TRANSPORTATION OF EXPLOSIVES .....</b>	<b>46</b>
Section 5-1	General Requirements.....	46
<b>ARTICLE 6</b>	<b>USE OF EXPLOSIVE MATERIALS .....</b>	<b>48</b>
Section 6-1	General Requirements .....	48
Section 6-2	Drilling and Loading .....	50
Section 6-3	Electric Initiation of Blasts .....	51
Section 6-4	Safety Fuse Initiation of Blasts.....	53

Section 6-5	Non-electric Initiation of Blasts.....	54
Section 6-6	Use of Detonating Cord .....	55
Section 6-7	Electronic Initiation of Blasts .....	56
Section 6-8	Firing the Blast .....	57
Section 6-9	Misfires .....	57
Section 6-10	Blasting Vibration and Air Over-Pressure Standards.....	58
<b>ARTICLE 7</b>	<b>AVALANCHE MITIGATION .....</b>	<b>61</b>
Section 7-1	General Requirements .....	61
Section 7-2	Training Requirements.....	61
Section 7-3	Make-up Room Requirements .....	64
Section 7-4	Use of Explosives.....	66
Section 7-5	Transportation .....	72
<b>ARTICLE 8</b>	<b>GEOPHYSICAL OPERATIONS.....</b>	<b>73</b>
Section 8-1	General Requirements .....	73
<b>ARTICLE 9</b>	<b>BLACK POWDER EXPLOSIVES .....</b>	<b>75</b>
Section 9-1	General Requirements .....	75
<b>ARTICLE 10</b>	<b>ALTERNATE METHODS AND EMERGENCY VARIANCES .....</b>	<b>73</b>
Section 10-1	Alternate Methods or Procedures .....	73
Section 10-2	Emergency Variances from Requirements .....	73
Section 10-3	Retention of Approved Variations .....	74
<b>ARTICLE 11</b>	<b>ENFORCEMENT .....</b>	<b>75</b>
Section 11-1	Enforcement Program .....	75
11-1-1	Notice of Violation .....	75
11-1-2	Enforcement Order .....	75
11-1-3	Informal Conference .....	75

## **ARTICLE 1      GENERAL PROVISIONS**

### **Section 1-1      Basis and Purpose**

These regulations are promulgated to establish rules for the use, manufacture, possession, sale, storage, transport, or disposal of explosives materials or blasting agents in the interest of the life, health, and safety of employees and the general public, as well as the protection of property.

To this end, a procedure for the granting of explosives permits is contained herein whereby the opportunity to use, manufacture, possess, sell, store, transport, or dispose of explosives materials is restricted to such permittees and conditioned upon satisfactory continued compliance with these rules and regulations. Failure to comply with these rules and regulations subjects the permittee to suspension, denial, or revocation of the permit.

Adoption of these rules and regulations is intended to greatly clarify the Division of Oil and Public Safety requirements pertaining to the use of explosive materials, to ease the burden on the permittee where interpretation has been necessary, and to better incorporate the numerous requirements from other governmental agencies. These rules and regulations provide for uniformity of compliance and elimination of numerous areas of confusion and duplication in an effort to better serve and protect the public.

### **Section 1-2      Statutory Authority**

The amendments to these regulations are created pursuant to Section 9-7-105, C.R.S. (2004) of the Colorado Revised Statutes. All prior rules for explosive materials are hereby repealed.

### **Section 1-3      Effective Date**

These amended regulations shall be effective on December 1, 2018. The previous versions of these regulations were effective on March 10, 2015, and January 1, 2009.

### **Section 1-4      Scope**

These rules and regulations shall apply to the use, manufacture, purchase, possession, sale, storage, transportation, and disposal of explosive materials in the State of Colorado by any individual, corporation, company, firm, partnership, association, or state or local government agency.

These rules and regulations shall not apply to:

- (A)            The shipment, transportation, and handling of military explosives by the Armed Forces of the United States or the State Militia.
- (B)            The normal and emergency operations of any government law enforcement agency including all departments, and divisions thereof, provided they are acting in their official capacity and in the proper performance of their duties and functions.
- (C)            Explosives in the forms prescribed by the official United States Pharmacopoeia or the National Formulary and used in medicines and medicinal agents.
- (D)            Explosive materials while in the course of transportation by for-hire commercial carriers via railroad, water, highway, or air when the explosive materials are moving under the jurisdiction of, and in conformity with, regulations adopted by any Federal Department or Agency.
- (E)            The components for hand loading rifle, pistol, and shotgun ammunition and/or rifle, pistol, and shotgun ammunition.



- (F) The manufacture, sale and use (public display) of pyrotechnics commonly known as fireworks, including signaling devices such as flares, fuses, and torpedoes.
- (G) Gasoline, fertilizers, installed propellant/powder-actuated safety devices or propellant/powder-actuated power tools.
- (H) The use and storage of model rocket motors containing a propellant weight of 62.5 grams or less and which produce less than 17.92 pound seconds of total impulse.

No permit shall be required for the occasional purchase of explosives by a person for normal agricultural purposes where such person is known by the seller of such explosives, and a record is kept of such transactions by the seller, including the specific purpose for which such explosives will be used, the location of the purposed use, the signature of the purchaser, and the certification of the seller as to his personal knowledge of the purchaser. Violation of this record requirement shall cause the seller's permit to be canceled. A permit is required for any manufacturing, storage, dealing, or non-agricultural use of explosives as outlined in Article 3 of this regulation.

No person, firm, partnership, or corporation whose possession of explosive materials is for the purpose of underground mining, surface or underground metal mining, or surface or underground coal mining and whose use and storage is subject to regulation by the provisions of 30 Code of Federal Regulations (CFR) - Parts 56, 57, 75 or 77 shall be subject to the provisions of the Explosives Act, Sections 9-7-101, et seq., Colorado Revised Statutes (C.R.S.).

No person, firm, partnership, or corporation whose possession, use, or storage of explosive materials is subject to regulation by the provisions of Colorado Mining Law, Sections 34-21-104 and 34-21-110, C.R.S. shall be subject to the provisions of the Explosives Act, Sections 9-7-101, et seq., C.R.S.

A permit issued by the Division of Oil and Public Safety shall be required for the possession, use, or storage of explosives in mining operations whose use and storage is not subject to the provisions of 30 CFR - Parts 56, 57, 75 or 77 or Colorado Mining Law, Sections 34-21-104 and 34-21-110, C.R.S.

Except as noted in the foregoing, the Division of Oil and Public Safety may approve or disapprove the location for, and limit the quantity of, explosives or blasting agents which may be loaded, unloaded, reloaded, stored, or temporarily retained at any facility within the State of Colorado.

The Division of Oil and Public Safety may issue an explosive permit for continued use for a period of time not to exceed 36 months.

## **Section 1-5 Definitions**

The following publications and codes are hereby incorporated by this reference:

- Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), U.S. Department of Justice, Publication ATF P 5400.7, ATF- Explosives Law and Regulations (2012)
- Title 49 CFR - Parts 100-177 (inclusive) Parts 390-397 U.S. Department of Transportation (Revised September 27, 2012)
- National Electric Code (NEC), 2017 Edition, National Fire Protection Association (NFPA)
- Institute of Makers of Explosives (IME) Safety Library Publication No. 22 (February 2007)
- Institute Of Makers Of Explosives (IME) Safety Library Publication No. 20 (December 2011)
- The Avalanche Artillery Users of North America Committee (AAUNAC) Training Standard (Revised May 16, 2012)

These rules incorporate the editions and revisions specified. Subsequent editions and revisions have not been incorporated by this reference. The publications incorporated by this reference may be examined and a copy of them may be obtained upon request and payment of the cost of reproduction during regular business hours from the Colorado Department of Labor and Employment, Division of Oil and Public Safety, 633 17th Street, Suite 500, Denver, CO 80202, and may also be inspected at the state depository libraries.

The following words when used in these rules and regulations shall mean:

**AIR OVERPRESSURE, OVERPRESSURE:** The airborne shock wave or acoustic transient generated by an explosive.

**AMERICAN TABLE OF DISTANCES:** A quantity-distance table prepared and approved by the Institute of the Makers of Explosives, for storage of explosive materials to determine safe distances from inhabited buildings, public highways, passenger railways, and other stored explosive materials. See Section 4.6 of these regulations.

**AMMONIUM NITRATE:** The ammonium salt of nitric acid represented by the formula  $\text{NH}_4\text{NO}_3$ .

**APPROVED STORAGE FACILITY (APPROVED MAGAZINE):** A facility for the storage of explosives materials conforming to the requirements of these rules and regulations.

**ATTEND(ED):** The physical presence of an authorized person within the field of vision of explosives or the use of explosives.

**AUTHORIZED, APPROVED, OR APPROVAL:** Terms which mean approved, approval, or authorized by the Division.

**AUTHORIZED PERSON:** A person approved or assigned by the management to perform a specific type of duty or duties or to be at a specific location or locations at the job site.

**ARMED CHARGE:** An explosive cartridge that contains a detonator.

**ARTIFICIAL BARRICADE:** An artificial mound, berm, or wall of earth of a minimum thickness of 3 feet, or any other approved barricade that offers equivalent protection.

**AVALAUNCHER:** A compressed gas explosives delivery system designed for avalanche hazard mitigation.

**BARRICADED:** The effective screening of a building or magazine containing explosive materials from another magazine or building, railway, or highway by a natural or artificial barrier. A straight line from the top of any sidewall of the building or magazine containing explosives materials to the eave line of any magazine or building or to a point 12 feet above the center of a railway or highway shall pass through the barrier.

**BINARY (TWO-COMPONENT) EXPLOSIVE:** A blasting explosive formed by the mixing or combining of two precursor chemicals, (e.g., ammonium nitrate and nitromethane).

**BLACK POWDER:** A deflagrating or low explosive compound of an intimate mixture of sulfur, charcoal and an alkali nitrate (usually potassium or sodium nitrate).

**BLAST AREA:** Area of the blast within the influence of flying rock missiles, gases, vibration, and concussion.

**BLASTER:** A Type I permitted individual who is permitted by the Division to possess and control the use of explosives.

**BLASTER IN CHARGE:** A Type I permittee who is in charge of and responsible for the loading or preparing of the explosives charges, and either physically initiates the charge or is physically present when the charge is initiated at a specific job site. This individual is in charge of the planning of the blast at a specific job site, the supervision of all persons assisting on the blast and all persons in training, and is responsible for the inventory, inventory records, and blast records for the blast.

**BLASTING AGENT:** An explosive material which meets prescribed criteria for insensitivity to initiation.

For storage, Title 27, CFR, Section 55.11, defines a blasting agent as any material or mixture consisting of fuel and oxidizer intended for blasting, not otherwise defined as an explosive provided that the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 Blasting Cap when unconfined (Bureau of Alcohol, Tobacco, Firearms, and Explosives Regulation).

For transportation, Title 49 CFR defines a blasting agent as a material designed for blasting which has been tested and found to be so insensitive that there is very little probability of accidental initiation to explosion or transition from deflagration to detonation (US Department of Transportation Regulation).

**BLASTING MAT:** A mat of woven steel, wire, rope, scrap tires, or other suitable material or construction to cover blast holes for the purpose of preventing flying rock missiles.

**BLAST PATTERN, DRILL PATTERN:** The plan of the drill holes laid out for blasting; an expression of the burden distance, the spacing distance and their relationship to each other.

**BLAST SITE:** Area where explosive material is handled during blasting operations, including the perimeter of blast holes and a distance of 50 feet in all directions from explosive charges, loaded boreholes or boreholes to be loaded.

**BOOSTER:** An explosive charge, usually of high detonation velocity and detonation pressure, designed to be used in the initiation sequence between an initiator or primer and the main charge.

**BOREHOLE, BLAST HOLE, DRILL HOLE:** A hole drilled in the material to be blasted, for the purpose of containing an explosive charge.

**BULK MIX:** A mass of explosive material prepared for use in bulk form without packaging.

**BULK MIX DELIVERY EQUIPMENT:** Equipment (usually a motor vehicle with or without a mechanical delivery device) which transports explosive material in bulk form for mixing and/or loading directly into blast holes.

**BULLET-RESISTANT:** Magazine walls or doors of construction resistant to penetration of a bullet of 150-grain M2 ball ammunition having a nominal muzzle velocity of 2,700 feet per second fired from a .30 caliber rifle from a distance of 100 feet perpendicular to the wall or door.

When a magazine ceiling or roof is required to be bullet-resistant, the ceiling or roof shall be constructed of materials comparable to the side walls or of other materials which will withstand penetration of the bullet described above when fired at an angle of 45 degrees from perpendicular.

Tests to determine bullet resistance shall be conducted on test panels or empty magazines which shall resist penetration of 5 out of 5 shots placed independently of each other in an area of at least 3 feet by 3 feet. Examples of construction that meet this definition are given in Article 4 as alternate construction standards for Type 1 and Type 2 magazines.

**BULLET-SENSITIVE EXPLOSIVE MATERIAL:** Explosive material that can be detonated by 150 grain M2 ball ammunition having a nominal muzzle velocity of 2,700 feet per second when the bullet is fired from a .30 caliber rifle at a distance of not more than 100 feet and the test material, at a temperature of 70-75 degrees Fahrenheit, is placed against a backing material of 2 inch steel plate.

**BURDEN:** The distance from the borehole and the nearest free face, or the distance between boreholes measured perpendicular to the spacing. Also, the total amount to be blasted by a given hole, which is usually measured in cubic yards or tons.

**BUS WIRE:** Expendable heavy gauge bare copper wire used to connect detonators or series of detonators in parallel.

**CHARGE-PER-DELAY:** Any charges firing within any 8-millisecond time period are considered to have a cumulative effect on vibration and air over-pressure effects. Therefore, the maximum charge-per-delay (w) is the maximum weight of all charges firing within any 8-millisecond (ms) time period from the time a blast starts until the time it ends. For example, if two 10-lb charges fire at 100 ms and one 15-lb charge fires at 105 ms, the maximum charge-per-delay (w) for this time period would be 35 lbs.

**COLLAR:** The mouth or opening of a borehole.

**CONNECTING WIRE:** Wire used to extend the firing line or leg wires in the electric blasting circuit.

**CONTROL:** To directly exercise authority or dominating influence over the use, manufacture, acquisition, purchase, sale, distribution, storage, transportation, or disposal of explosive materials.

**CORNICE:** An overhanging mass of windblown snow or ice, usually located near a sharp terrain break.

**DATE-SHIFT CODE:** A code, required by federal regulation (ATF), applied by manufacturers to the outside shipping containers, and, in many instances, to the immediate containers of explosive materials to aid in their identification and tracing. The code indicates the date, work shift and plant of manufacture.

**DAY BOX:** A portable magazine for the temporary and attended storage of explosives. Day boxes shall meet construction requirements of a Type 3 magazine.

**DEALER:** Any person engaged in the business of distributing explosive material at wholesale or retail.

**DECK:** An explosive charge that is separated from other charges in the blast hole by stemming or an air cushion.

**DEFLAGRATION:** An explosive reaction, such as rapid combustion, that moves through an explosive material at a velocity less than the speed of sound in the material.

**DENSITY:** The mass of an explosive per unit volume, usually expressed in grams per cubic centimeter or pounds per cubic foot.

**DETONATING CORD:** A flexible cord containing a center core of high explosives, which may be used to initiate other high explosives.

**DETONATION:** An explosive reaction that moves through an explosive material at a velocity greater than the speed of sound in the material.

**DETONATOR:** Any device containing any initiating or primary explosive that is used for initiating detonation. A detonator may not contain more than 10 grams of total explosives by weight,

excluding ignition or delay charges. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, electronic detonators, blasting caps for use with safety fuses, detonating cord delay connectors, and non-electric instantaneous and delay blasting caps which use detonating cord, shock tube, or any other replacement for electric leg wires.

**DIVISION:** The Director of the Division of Oil and Public Safety of the Department of Labor and Employment or any designees thereof which may include certain employees of the Division of Oil and Public Safety or other persons.

**DOWN LINE:** A line of detonating cord or plastic tubing in a blast hole which transmits detonation from the trunkline or surface delay system down the hole to the primer.

**ELECTRIC DETONATOR:** A detonator designed for and capable of initiation by means of an electric current.

**ELECTRONIC DETONATORS:** A detonator that utilizes stored electrical energy as a means of powering an electronic timing delay element/module and that provides initiation energy for firing the base charge.

**EMULSION:** An explosive material containing substantial amounts of oxidizers dissolved in water droplets surrounded by an immiscible fuel, or droplets of an immiscible fuel surrounded by water containing substantial amounts of oxidizer.

**EXPLOSIVE:** Any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters.

**EXPLOSIVE MATERIALS:** These include explosives, blasting agents, and detonators. The term includes but is not limited to dynamite and other high explosives; slurries, emulsions, and water gels, black powder, initiating explosives, propellant rockbreaking cartridges (such as Rockrackers™), detonators (blasting caps), safety fuses, squibs, detonating cord, igniter cord, and igniters. Binary explosives (such as Kinepak™ or Execon™), sold in two or more components, are considered an explosive material requiring a Division explosives permit.

**EXPLOSIVE OILS:** Liquid explosive sensitizers for explosive materials (.e.g., nitroglycerin, ethylene glycol dinitrate and metriol trinitrate).

**EXTRANEIOUS ELECTRICITY:** Electrical energy, other than actual firing current or the test current from a blasting galvanometer, that is present at a blast site and that could enter a blasting circuit. It includes stray current, static electricity, electromagnetic waves, and time varying electric and magnetic fields.

**FIRE EXTINGUISHER RATING:** A rating set forth in the National Fire Code which may be identified on an extinguisher by a number (5, 20, 70, etc.) indicating the extinguisher's relative effectiveness, followed by a letter (A, B, C, etc.) indicating the class or classes of fires for which the extinguisher has been found to be effective.

**FIRE-RESISTANT:** Construction designed to provide reasonable protection against fire. For exterior walls or magazine constructed of wood, this shall mean fire resistance equivalency provided by sheet metal of not less than #26 gauge.

**FIRING LINE:** The wire(s) connecting the electrical power source with the electric or electronic blasting circuit.

**FLYROCK:** Dirt, mud, stone, fragmented rock or other material that is propelled from the blast site by the force of an explosion.

**FREE FACE:** A rock surface exposed to air or water which provides room for expansion upon fragmentation.

**FUSE (SAFETY):** A flexible cord containing an internal burning medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition to a cut end. A fuse detonator is usually attached to that end, although safety fuse may be used without a detonator to ignite material such as deflagrating explosives.

**FUSE DETONATOR, BLASTING CAP:** A detonator which is initiated by a safety fuse or used in an avalauncher round; also referred to as an ordinary blasting cap. Also see detonator.

**FUSE LIGHTERS:** Pyrotechnic devices for the rapid and certain lighting of safety fuse.

**FUEL:** A substance which may react with oxygen to produce combustion.

**GRAINS:** In the avoirdupois system of weight measurement, 7,000 7000 grains are equivalent to one standard, 16-ounce pound (0.45 kg). A grain is 0.0648 grams in both the avoirdupois and troy systems.

**GROUND VIBRATION:** Shaking the ground by elastic waves emanating from a blast; usually measured in inches per second of particle velocity.

**HARDWOOD:** Red Oak, White Oak, Hard Maple, Ash, or Hickory, free from loose knots, wind shakes, or similar defects.

**HIGH EXPLOSIVES:** Explosives which are characterized by a very high rate of reaction, high pressure development and the presence of a detonation wave, including, but not limited to, dynamite, detonating cord, cast boosters, detonators, cap-sensitive slurry, emulsion, or water gels, and mixed binaries.

**HOWITZER:** A military cannon that delivers projectiles at medium muzzle velocity at low or high trajectories.

**INHABITED AREA OR BUILDING:** A building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building or structure occupied in connection with the manufacture, transportation, storage, and use of explosive materials.

**INSPECTOR:** An Inspector of the Division.

**INITIATION:** The start of deflagration or detonation in an explosive material.

**INITIATION SYSTEM:** Combination of explosive devices and accessories (detonators, wire, cord, etc.) designed to convey a signal and initiate an explosive charge.

**LAWFUL POSSESSOR:** A Type II permittee who has legally purchased or acquired explosive materials.

**LOADING DENSITY:** The weight of explosive, expressed as pounds per foot or kilograms per meter of borehole.

**LOW EXPLOSIVES:** Explosives which are characterized by deflagration or a low rate of reaction and the development of low pressure.

**MAGAZINE:** Any building, structure, or container, other than an explosives manufacturing building,

approved for the storage of explosive materials.

**MAGAZINE DISTANCE:** Shall mean the minimum distance permitted between any two storage magazines which is expected to prevent propagation of an explosion from one magazine to another from a blast.

**MAKE-UP ROOM:** A room located inside an uninhabited building which shall be used for the assembly of cap and fuse or for the arming of explosive charges used in avalanche mitigation work.

**MANUFACTURER:** Any individual, corporation, company, firm, partnership, association, or state or local government agency engaged in the business of manufacturing explosive materials for the purpose of sale, distribution or for his own use.

**MASS DETONATION:** When a unit or any part or quantity of explosive material detonates and causes all or a substantial part of the remaining material to detonate.

**MISFIRE:** A blast that fails to detonate completely after an attempt at initiation. This term is also used to describe the explosive material itself that has failed to detonate as planned.

**MOTOR VEHICLE:** A vehicle, machine, tractor, semi-trailer or other conveyance propelled or drawn by mechanical power. Does not include vehicles operated exclusively on rail.

**NATURAL BARRICADE:** Natural features of the ground, such as hills, or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the magazine when the trees are bare of leaves.

**NON-ELECTRIC DETONATOR:** A detonator that does not require the use of electric energy to function.

**OXIDIZER OR OXIDIZING MATERIAL:** A substance, such as nitrite, that readily yields oxygen or other oxidizing substances to promote the combustion of organic matter or other fuel.

**PERMANENT STORAGE MAGAZINE:** Type 1 magazines or Type 2, Type 4, or Type 5 magazines that have been at the same location for longer than 90 days.

**PARTICLE BOARD:** A composition board made of small pieces of wood that have been bonded together.

**PARTICLE VELOCITY:** A measure of the intensity of ground vibration, specifically the velocity of motion of the ground particles as they are excited by the wave energy.

**PERMITTEE:** Any user, purchaser, manufacturer, dealer, storer, disposer, or transporter of explosives for a lawful purpose, who has obtained a permit from the Division.

**PERSON:** Any individual, corporation, company, firm, partnership, association, or state or local government agency.

**PETN:** Pentaerythritol tetranitrate.

**PLACARDS:** Division of Transportation Approved Title 49 CFR signs placed on vehicles transporting hazardous materials (including explosive materials) indicating the nature of the cargo.

**PLYWOOD:** Exterior construction-grade plywood.

**POSSESS:** The physical possession of explosives on one's person, or in the person's vehicle, magazine

or building.

**POWDER:** A common synonym for explosive materials.

**POWDER FACTOR:** The amount of explosives used per unit of blasted material (see Loading Density).

**PRIMER:** A unit, package, or cartridge of explosives used to initiate other explosives or blasting agents, which contains either a detonator or a detonating cord to which a detonator designed to initiate the detonating cord is attached.

**PROPELLANT/POWDER-ACTUATED POWER DEVICE:** Any tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge.

**PUBLIC CONVEYANCE:** Any railroad car, streetcar, ferry, cab, bus, aircraft, or other vehicle carrying passengers for hire.

**PUBLIC HIGHWAY:** Shall mean any public street, alley, or road.

**PUBLIC HIGHWAY DISTANCE:** Shall mean the minimum distance permitted between a public highway and an explosives magazine.

**PUBLIC PLACE:** A place which the public or a substantial number of the public has access, and includes but is not limited to, highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common areas of public and private buildings and facilities.

**PURCHASER:** A Type II permittee who acquires explosives.

**PYROTECHNICS, FIREWORKS:** Any combustible or explosive compositions or manufactured articles designed and prepared for the purpose of producing audible or visible effects.

**RAILWAY:** Any steam, electric, or other type of railroad or railway.

**RESPONSIBLE PERSON:** A Type I permitted individual who is directly responsible for a Type II permittee's compliance with the provisions of the Explosives Act, 9-7, C.R.S., and any rules and regulations promulgated thereunder.

**SAFETY FUSE:** A flexible cord containing an internal burning medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition to a cut end. A fuse detonator is usually attached to that end, although safety fuse may be used without a detonator to ignite material such as deflagrating explosives.

**SCALED DISTANCE ( $D_s$ ):** A factor relating similar blast effects from various weight charges of explosive material at various distances. Scaled Distances referring to blasting effects are obtained by dividing the distance of concern by a fractional power of the charge weight per delay of the explosive materials.

**SECURED STORAGE:** An area which is protected from weather and is theft-resistant and in compliance with the uniform fire code.

**SEISMOGRAPH:** An instrument that is useful in monitoring blasting operations for recording records ground vibration. Particle velocity, displacement or acceleration is generally measured and recorded in three mutually-perpendicular directions.

**SEMI-CONDUCTIVE HOSE:** A hose used for pneumatic conveying of explosive materials, having an electrical resistance high enough to limit flow of stray electric currents to safe levels yet not so



high as to prevent drainage of static electric charges to ground. A hose of not more than 2 megohms resistance over its entire length and of not less than 1,000 ohms per foot (3280 ohms per meter) meets this requirement.

**SENSITIVITY:** A physical characteristic of an explosive material classifying its ability to be initiated upon receiving an external impulse, such as heat, shock, friction, static electricity, stray current or other influence which can cause explosive decomposition.

**SHALL:** Means that the rule establishes a minimum standard which is mandatory.

**SHOCK TUBE:** A small diameter plastic tube containing reactive material used for initiating detonators. It contains only a limited amount of reactive material such that the energy that is transmitted through the tube by means of a detonation wave is guided through and confined within the walls of the tube.

**SITE:** Area where active blasting is taking place or the location of explosives storage magazines.

**SLURRY/WATER GEL:** An explosive material containing substantial portions of a liquid, oxidizers, and fuel, plus a thickener.

**SMALL ARMS AMMUNITION:** Any cartridge for a shotgun, rifle, pistol, or revolver, and cartridges for propellant-actuated power device and industrial guns. Military-type ammunition containing explosive bursting charges, or any incendiary, tracer, spotting, or pyrotechnic projectile is excluded from this definition.

**SOFTWOOD:** Douglas Fir, or other wood of equal bullet-resistance, free of loose knots, wind shakes, or similar defects.

**SPACING:** The distance between boreholes. In bench blasting, the distance is measured parallel to the free face and perpendicular to the burden.

**STATIC ELECTRICITY:** Electric charge at rest on a person or object. It is most often produced by the contact and separation of dissimilar insulating materials.

**STEMMING:** Inert material placed in a borehole on top of or between separate charges of explosive material, used for the purpose of confining explosive materials or to separate charges of explosive material in the same borehole.

**STEEL:** General purpose (hot or cold rolled) low carbon steel, such as specification ASTM A366 or equivalent.

**STORAGE:** The safekeeping of explosives in unattended magazines.

**TEMPORARY STORAGE MAGAZINE:** A Type 1, Type 2, Type 4, or Type 5 magazine that is at a location for a period not to exceed 90 days.

**THEFT-RESISTANT:** Construction designed to deter illegal entry into facilities used for the storage of explosive material.

**TWO-COMPONENT:** See binary explosive.

**TRANSPORTATION:** The conveyance or carrying of explosives from one place to another by means of a motorized vehicle or device.

**TYPE I EXPLOSIVES PERMIT:** A permit issued by the Division to individuals who possess and control explosive materials during the use, manufacture, acquisition, purchase, sale, distribution, storage,

transportation, or disposal of explosives materials.

**TYPE II EXPLOSIVES PERMIT:** A permit issued by the Division to corporations, companies, partnerships, firms, individuals operating a business, associations, or state or local government agencies involved in the use, purchase, sale, manufacture, transportation, acquisition, distribution or disposal of explosives materials.

**TYPE III EXPLOSIVES PERMIT:** A permit issued by the Division to corporations, companies, partnerships, firms, individuals operating a business, associations, or state or local government agencies for the storage of explosives in approved magazines.

**WEATHER-RESISTANT:** Construction designed to offer reasonable protection against weather.

**U.S. DEPARTMENT OF TRANSPORTATION EXPLOSIVE CLASSIFICATIONS FOR THE  
TRANSPORTATION OF EXPLOSIVES:**

Division 1.1: Explosives that have a mass explosion hazard

Division 1.2: Explosives that have a projection hazard but not a mass explosion hazard

Division 1.3: Explosives that have a fire hazard and either a minor blast hazard or minor projection hazard or both, but not a mass explosion hazard

Division 1.4: Explosives that present minor explosion hazard

Division 1.5: Very insensitive explosives that have a mass explosion hazard, but are so insensitive that there is little probability of initiation or of transition from burning to detonation under normal conditions of transport (Blasting Agents)

## **ARTICLE 2     GENERAL REQUIREMENTS**

### **Section 2-1     Miscellaneous Requirements**

- (A) No person shall sell, display, or expose for sale an explosive or blasting agent on any public way or public place.
- (B) No person shall sell, deliver, or give possession and control of explosives materials to any person not in possession of a valid permit except an authorized for-hire commercial carrier transporting between two valid permittees.
- (C) No person shall sell, purchase, store, transport, use or otherwise possess or control any explosive material without the authorization of the lawful possessor of the explosive material. The lawful possessor shall file a written list of authorized Type I permittees with the Division and shall notify the Division of any changes in writing.
- (D) Any theft or loss of explosives or blasting agents, whether from a storage magazine or area, a vehicle in which they are being transported, or from a site where they are being used, or from any other location, shall immediately (but in no event later than 24 hours) be reported by the person having control of such explosives or blasting agents to the local sheriff or local police, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and the Division.
- (E) All individuals, corporations, companies, firms, partnerships, associations, or state or local government agencies conducting an operation or activity requiring the use, possession, purchase, sale, manufacturing, storage, acquisition, distribution, transportation or disposal of any explosive materials shall:
  - (1) Obtain a permit from the Division prior to conducting such operation or activity and shall be responsible for the results and any other consequences of any loading and firing of the explosive materials; and
  - (2) NOT delegate either performance of the blast or accountability for such performance to another person(s).
- (F) The Division, Public Safety Section and local law enforcement authority shall be notified immediately by the permittee of any accident, explosion, fire, or misuse of explosives which occurs in connection with the use, manufacture, possession, sale, transportation, storage or disposal of explosives that results in the loss of life, personal injury, or damage to any property.
- (G) The Division may inspect the site where any accident, explosion, fire, misuse, theft or loss of explosives occurred.
- (H) A Division representative may enter during normal business hours, without advance notice, the premises of any permittee, including places of storage or use, for the purpose of inspecting or examining any records or documents required under these regulations and any explosives material used or stored at the premises.
- (I) All corporations, companies, partnerships, firms, individuals operating a business, associations, or state or local government agencies conducting blasting operations shall have a certificate of liability insurance, be named as an also insured on another liability insurance policy, or shall have obtained a signed release of liability for damages from blasting operations from all parties who may be potentially affected by blasting operations. The U.S. Forest Service (USFS) should be notified prior to all blasting activities that occur on USFS land.

## **ARTICLE 3     EXPLOSIVES PERMIT**

### **Section 3-1     Basic Legal Obligations**

- (A) Except as specifically allowed by these regulations, it is unlawful for any person to use, possess and control, manufacture, purchase, sell, store, transport, or dispose of any explosive material without possessing a valid permit from the Division (18-12-109 (2) and 9-7-101, et seq., C.R.S.).

### **Section 3-2     General Requirements**

- (A) Permits issued under these rules and regulations shall be dated and numbered. Each permit will indicate class of permit, and shall be valid for up to 36 months after the date of issue unless revoked or suspended by the Division, and shall be renewed on or before the expiration date. The application for renewal of permits shall be made to the Division prior to the renewal date to avoid possible lapse of said permit. The Division shall send a notice a minimum of 60 days prior to the expiration date. The failure of the permittee to receive timely notice from the Division shall not excuse the permittee's requirement to submit a renewal application not less than 30 days prior to the expiration date.
- (B) Upon notice from the Division or any law enforcement agency having jurisdiction, a person using, manufacturing, purchasing, selling, storing, transporting, disposing, or otherwise in possession and control of any explosives without a permit shall immediately surrender any and all such explosives to the Division or to the law enforcement agency designated by the Division.
- (C) The Division shall require, as a condition precedent to the original issuance of any explosives permit, fingerprinting and criminal history record checks for every individual applicant. Fingerprints shall be submitted on forms provided to the applicant by the Division. If a Type I permit holder submits a complete application for renewal, fingerprint cards are not required unless requested by the Division. As a condition precedent to renewal of any explosives permit for an individual, a criminal background check is required.
- (D) No person shall withhold information or make any false statement or fictitious oral or written statement or furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining or retaining an explosives permit.
- (E) No person shall knowingly make any false entry in any record that a permittee is required to keep pursuant to these regulations.
- (F) When a permit has expired and has not been renewed, the applicable County Sheriff's Department shall be notified by the Division, and the Type II permittee must turn over any remaining explosives which the permittee is in possession of directly to the Division or the law enforcement agency designated by the Division, or in the presence of the Division or the law enforcement agency designated by the Division, surrender control of all remaining explosives which the permittee is in possession of to a valid Type II permittee.
- (G) All permittees shall take every reasonable precaution to protect their permits from loss, theft, defacement, destruction, or unauthorized duplication. The loss or theft of any permit shall be reported immediately to the local law enforcement agency and to the Division.

### **Section 3-3     Revocation, Suspension, or Denial of Explosives Permits**

- (A) The Division shall not issue a permit to any person who:
  - (1) Is under 21 years of age;

- (2) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;
  - (3) Is currently charged with, or has a charge pending for a crime punishable by imprisonment for a term exceeding 1 year;
  - (4) Is a fugitive from justice;
  - (5) Has been convicted of a crime involving the illegal distribution of marijuana, any depressant or stimulant drug, or narcotic drug, perjury, fraud, false swearing, or bomb threats;
  - (6) Has been adjudicated developmentally disabled, mentally unstable, mentally ill or insane, or to be incompetent due to any mental disability or disease;
  - (7) Has been discharged from the armed forces under dishonorable conditions;
  - (8) Is an alien, other than an alien who is lawfully admitted for permanent residence or an alien who has obtained either a letter of clearance or letter of restoration of explosives privileges from the ATF; or
  - (9) Having been a citizen of the United States, has renounced citizenship.
- (B) The Division shall deny or revoke and not renew the permit of any person who is currently charged with, has a charge pending or has been convicted of any of the following offenses:
- (1) A crime punishable by imprisonment for a term exceeding 1 year;
  - (2) A crime involving the illegal distribution of marijuana, any depressant or stimulant drug, or narcotic drug, bomb threats, perjury, fraud, or false swearing, including making a false affidavit or statement under oath to the Division in an application or report; or
  - (3) A crime relating to use, manufacturing, sale, transportation, possession, or disposal of explosives.
- (C) The Division may revoke and not renew the permit of any person when the violation of any law or regulation relating to explosive material or the misuse of explosive materials results in loss of life or serious injury to any person.
- (D) A permit may be denied, suspended, or revoked by the Division because of, but not limited to the following:
- (1) Unlawful use of, or addiction to, alcohol, narcotics or illegal drugs;
  - (2) Failure to exercise reasonable safeguards resulting in hazard to life, health, or property;
  - (3) Failure to show legitimate use for a permit;
  - (4) Failure to show sufficient proof of training or prior experience with explosives;
  - (5) Non-compliance with an order issued by the Division within the time specified in such order;
  - (6) Proof that the permittee or applicant advocates, or knowingly belongs to any organization or group that advocates the violent overthrow of, or violent action against any federal, state, or local government or institution;
  - (7) Failure to comply with the Colorado Explosives Act, these regulations, federal, state and/or

local explosives laws and regulations;

- (8) Giving false information or a misrepresentation being willfully made to the Division and its investigators or inspectors to obtain or maintain a permit;
  - (9) Making a false affidavit or statement under oath to the Division in an application or report; or
  - (10) Other factors which, at the discretion of the Division, indicate an unfitness to hold an explosive permit in compliance with state and federal law and these regulations.
- (E) The Division shall revoke the permit of any person adjudicated to be mentally unstable, mentally ill or insane, or to be incompetent due to any mental disability or disease. The Division shall not renew the permit until the person has been legally restored to competency.

#### **Section 3-4 Procedure on Revocation, Suspension, or Denial of Explosives Permit**

- (A) In any case where the Division denies, suspends, or revokes a permit, the Division shall notify the applicant or permittee in writing. Said notice shall state the reason for denial, suspension, or revocation and state that, upon receiving a written request, a hearing shall be scheduled.
- (B) Upon notice of the revocation or suspension of any permit, the former permittee shall immediately surrender to the Division the permit and all copies thereof. In addition, the former permittee must surrender control of all explosive material in his/her possession to the Division or the law enforcement agency designated by the Division, or in the presence of the Division or the law enforcement agency designated by the Division surrender control of all explosive material in his/her possession to a valid Type II permittee until a final determination on the charges is made.
- (C) The period of denial, suspension, or revocation shall be within the sound discretion of the Division.
- (D) Any person whose permit has been denied, suspended, or revoked under Section 3.3 may apply to the Division for a hearing in order to seek relief.
  - (1) The hearing shall be conducted by the Division or an Administrative Law Judge with the Division of Administrative Hearings on behalf of the Division in accordance with the procedures of 24-4-105 C.R.S.
  - (2) The Division may grant the relief requested in the hearing if the Division determines that
    - i. The applicant is in compliance with all federal regulations; and
    - ii. The circumstances regarding the denial, suspension, or revocation, and the applicant's record and reputation are such that the granting of such relief is not contrary to public safety.
- (E) Any person aggrieved by a decision or order of the Division may seek judicial review pursuant to the provisions of 24-4-106 C.R.S.
- (F) Any person who has been denied a permit may not reapply to the Division for an explosives permit within one year of the decision, unless exception is made by the Division and the applicant establishes a substantial change in circumstances to indicate fitness to hold an explosive permit in accordance with the requirements of these regulations, State and Federal law.
- (G) In case of revocation or suspension of a permit, the Division shall notify all vendors of explosives of such revocation or suspension (24-4-104 C.R.S.).

### **Section 3-5 Permit Types and Classifications**

Permits are separated according to type. A permit may have more than one designated classification; however, for each and every classification requested, the applicant must show legitimate use and qualifications.

#### **3-5-1 Type I Explosives Permit**

- (A) All individuals who possess and control explosive materials shall have a valid Type I Explosives Permit issued by the Division.
- (B) The requirements of permitting a Type I permittee shall be:
  - (1) An individual who possesses and controls explosive materials during the use, transportation, storage, distribution, manufacturing, sale, acquisition, or purchase of explosive materials.
  - (2) An individual who makes any or all of the following decisions:
    - (i) Decides total quantity of explosives used;
    - (ii) Decides borehole size, spacing, or depth;
    - (iii) Decides quantity of explosives in each borehole or charge;
    - (iv) Decides initiation system to be used;
    - (v) Decides timing delays to be used.
  - (3) An individual who directly supervises all personnel assisting in the use of explosives and supervises all personnel in training.
  - (4) An individual who shall also be physically present during the use of explosives, at the point of initiation when a charge is detonated and either initiates the detonation or gives the order to initiate the detonation of the charge.
- (C) The classification of permits the applicant may apply for shall be:
  - (1) Construction
    - (i) Applicant must also apply for a Type I transporter permit, or provide to the Division a written plan documenting the manner in which explosives shall be legally transported to and from construction sites.
  - (2) Construction Limited
    - (i) Applicant may use or possess class 1.4 or 1.5 explosives or binary products only.
  - (3) Possession
    - (i) An individual who possesses explosive materials during the storage, distribution, component assembly, manufacturing, sale, acquisition or purchase of explosive materials. This endorsement does not allow an individual to exercise responsibilities as described in 3-5-1 (B) (2) through (4).
    - (ii) The requirement listed in 3-5-1(D)(3) does not apply to this classification.

- (4) Quarry Operations
  - (5) Avalanche Mitigation
  - (6) Geophysical Research
  - (7) Transporter
    - (i) Applicant must submit a copy of his/her Commercial Driver's License with the Hazardous Material Endorsement included on it.
    - (ii) Required for the transportation of explosive materials and blasting agents in quantities required to be placarded across or over roads within the state.
  - (8) Well Perforation
  - (9) Manufacturer
  - (10) Special (special use or possession and control as described on the permit, including but not limited to fabrication, research and development, rock-breaker cartridges, demolition, law enforcement, unexploded ordnance disposal, purchasing agent, sales agent,.)
- (D) Type I permittee qualifications
- (1) The Type I permittee shall be able to understand and give written and oral orders.
  - (2) The Type I permittee shall be qualified by reason of training, knowledge, and experience in the field of using, transporting, possessing, storing and handling of explosives, and have a working knowledge of state, federal and local laws and regulations which pertain to explosives.
  - (3) The Type I permit applicant shall be required to submit proof of not less than one year of explosives experience or on the job training in explosives specific to at least one classification of permit. Avalanche mitigation applicants must meet training requirements as defined in Section 7-2.
  - (4) The Type I permit applicant shall be required to submit proof of not less than six months of explosive experience or on-the-job training in explosives specific to each additional classification of permit applied for.
  - (5) The Type I permittee shall be knowledgeable and competent in the use of each type of blasting method and initiation system used.
  - (6) A Type I permit applicant for a transportation classification permit only shall have a valid commercial driver's license with a hazardous materials endorsement and experience in the transportation of explosive materials for a period of not less than ninety days.
- (E) Type I permit limitations
- (1) A Type I permit shall be limited to possession and control of explosives while authorized by the Type II permittee(s) for whom the Type I permittee is employed or otherwise associated.
  - (2) The Type I permit shall be placed on inactive status by the Division upon notification in accordance with Section 3-9(D) that the Type I permittee is no longer authorized to possess and control explosives for a Type II permittee.



- (3) Upon receipt of written notification by a Type II permittee of authorization and the return of the original Type I permit card, the Division shall return the Type I permit to active status and issue an updated permit card reflecting the change in employment or association.
- (4) An active status Type I permit card shall be carried by the Type I permittee at all times when using, transporting, or possessing explosives.

### **3-5-2 Type II Explosives Permit**

- (A) Corporations, companies, partnerships, firms, individuals operating a business, associations, or state or local government agencies involved in the use, purchase, sale, manufacture, transportation, or disposal of explosives shall have a valid Type II Explosives Permit.
- (B) Only one Type II permit shall be required of any corporation, company, partnership, firm, individual operating a business, association, or state or local government agency, and may be issued for all or any of the following classifications:
  - (1) CLASSIFICATION AS A MANUFACTURER OF EXPLOSIVES authorizes the possession, manufacture, and purchase of materials required in the process of manufacturing the finished product. A corporation, company, partnership, firm, individual operating a business, association, or state or local government agency that combines compounds to manufacture an explosive is engaged in the business of manufacturing explosives and shall be responsible for compliance with the provisions of 9-6-105 C.R.S., the Explosives Act, 9-7-101, et seq. C.R.S., and any rules and regulations promulgated thereunder.
  - (2) CLASSIFICATION AS A DEALER OF EXPLOSIVES authorizes the purchase, possession, and resale of explosives or blasting agents. A dealer permit is required of jobbers, wholesalers, distributors, dealers, and retailers, whether or not they physically handle, store, or have possession of the explosives or blasting agents. This permit is also required for all nonresidents who desire to sell explosives within the State of Colorado.
  - (3) CLASSIFICATION AS A PURCHASER OF EXPLOSIVES authorizes the purchase or acquisition and possession of explosives and blasting agents.
  - (4) CLASSIFICATION AS A PURCHASER LIMITED authorizes the purchase or acquisition and possession of 1.4 and 1.5 classes of explosives and binary products.
  - (5) CLASSIFICATION AS A USER OF EXPLOSIVES authorizes the possession and use of explosives and blasting agents by a corporation, company, partnership, firm, individual operating a business, association, or state or local government agency conducting an operation or activity which requires the use of such materials. User permits shall be issued for the following types of operations:
    - (i) Construction
      - (a) Applicant must also apply for a Type II transportation permit, or provide to the Division a written plan documenting the manner in which explosives shall be legally transported to and from construction sites.
    - (ii) Construction Limited
      - (a) Applicant's use and possession of explosives is limited to 1.4 and 1.5 classes of explosives and binary products.
    - (iii) Quarry Operations

- (iv) Avalanche Mitigation
  - (v) Geophysical Research
  - (vi) Well Perforation
  - (vii) Manufacturer
  - (viii) Special (special use or possession and control as described on the permit, including but not limited to fabrication, research and development, rock-breaker cartridges, demolition, law enforcement, unexploded ordnance disposal, purchasing agent, , sales agent, etc.)
- (6) A TRANSPORTATION permit authorizes the transportation of explosive materials and blasting agents in quantities that are required to be placarded across or over roads within the state when such transportation is in compliance with federal, state and local transportation laws and regulations.
- (i) A copy of a Hazardous Materials Transport Permit issued by the Public Utilities Commission (PUC) shall be submitted with the application.

### **3-5-3 Type III Storage Permit**

- (A) Corporations, companies, partnerships, firms, individuals operating a business, associations, or state or local government agencies that store explosives shall have a valid Type III permit.
- (B) Storage permits shall be issued to those persons who have approved storage magazine sites.
- (C) Approval by the Division of a permanent storage magazine site shall include a site inspection by a Division representative. Written notification of the location of the permanent storage magazine site shall be made to the applicable fire district or department.
- (D) Approval by the Division of temporary magazine sites shall be made for a period not to exceed 90 days upon written notification to the Division as to the location of the magazine site, the type(s) and supplier of the magazines being utilized, the type and quantity of explosives being stored and proof of written notification of the location of the storage magazine to the applicable fire district or department and county sheriff.
- (E) An inspection shall be required at each permanent storage magazine site, including any added permanent storage magazine sites, prior to the renewal of the Type III permit.

### **Section 3-6 Permit Application**

- (A) Application for each type of original permit or renewal shall be made on forms available from the Division and shall provide the following information:
  - (1) The name and address of the applicant
  - (2) Front and reverse side copies of applicant's driver's license
  - (3) The reason for desiring to use, purchase, sell, store, manufacture, transport or dispose of explosives
  - (4) The applicant's citizenship, if the applicant is an individual

- (5) If the Type II applicant is a partnership, the names and addresses of the Type I permitted partners and their citizenship
  - (6) If the Type II or Type III permit applicant is a corporation, company, firm, association or state or local government agency, the names and addresses of the Type I permitted owner(s), manager(s) or other designated individual thereof, and their citizenship
  - (7) Where application for a Type II explosives permit is made in the name of a corporation, company, partnership, association, state or local government agency or firm, the application shall be signed by the permitted owner(s), partner(s), manager(s) or other designated individual(s) who will have access to explosive materials and be directly responsible for compliance with the provisions of the Explosives Act, 9-7-101, et seq. C.R.S., and any rules and regulations promulgated thereunder
  - (8) The name(s) of the valid Type II permittee the Type I permit applicant is employed by or associated with, and for whom the applicant will possess and control explosive materials
  - (9) Evidence that the Type I applicant is sufficiently trained and experienced in the use, transportation, storage, purchase, sale, disposal or manufacturing of explosives
  - (10) Such other pertinent information as the Division shall require to effectuate the purpose of these regulations
- (B) Application forms may be obtained from the Division.
- (C) The submission of an application shall be a certification by the Type I permit applicant that the applicant, or Type I permittee acting as the responsible person for the Type II or Type III permit applicant, has read, understands and accepts these regulations and shall comply with all requirements of these regulations.
- (D) Payment of the application fee for a period of 36 months, according to the following list, must accompany each application for a permit.
- |                             |          |
|-----------------------------|----------|
| Type I Explosives Permit:   | \$110.00 |
| Type II Explosives Permit:  | \$225.00 |
| Type III Explosives Permit: | \$375.00 |
- (E) A check or money order for the fee shall be made payable to the Division and submitted to the address provided on the application.
- (F) The applicant may be asked to supply additional information requested by the Division in order to verify statements in an application or in order to facilitate a Division inquiry prior to the issuance or renewal of a permit.
- (G) Each Type II application for a manufacturer or dealer permit shall be accompanied by a copy of the applicant's current federal license issued by The Bureau of Alcohol, Tobacco, Firearms and Explosives.
- (H) The Type II application for a manufacturer or dealer permit shall list the location(s) in Colorado where explosives will be manufactured or from where explosives will be sold. This shall not be required for the manufacturers of binary explosives.
- (I) A valid Type I permit shall be held by at least one of the individual owners, partners, managers or other designated individual for each classification of use requested on the Type II Explosives Permit application.

- (J) Each application for an original Type II permit or a renewal permit shall be accompanied by a list of valid Type I permittees authorized to possess and control explosives on behalf of the Type II permittee. The Division shall be notified of any changes of such Type I permittees.
- (K) An application for a Type III storage permit shall include the location of all storage facilities and types of magazines to be utilized.
- (L) Each application for a Type II permit to purchase shall have a list of Type I permittees authorized to order and receive explosives on behalf of the purchaser. The list of Type I permittees authorized to order and receive explosives on behalf of the purchaser shall be provided to dealers prior to the purchase of explosives.
- (M) In addition to the application form, all new Type I applicants, all Type I applicants requesting a change in classification of their permit, and all Type I applicants who have not renewed their permit within 60 days after expiration will be required to obtain a score of not less than 90% on a written examination prepared and administered by the Division. A Type I applicant failing the examination may retake the examination at any time. A Type I applicant failing the examination a second time must wait for a period of at least 14 days before retaking the exam.
- (N) All Type I applicants renewing their permits are required to obtain a score of not less than 90% on a written examination prepared and administered by the Division every 3 years or provide proof of 16 hours attendance during the previous 3 years in a training course approved by the Division.
- (O) The Division shall obtain a photograph of Type I permit applicants.
- (P) Upon receipt of an incomplete application or an application requiring additional information, the applicant will be notified of the deficiency or additional requirements. If the deficiency is not corrected or if the Division does not receive the additional information within 180 days following the date of notification, the application shall be considered abandoned and the Division shall not retain the application.
- (Q) Upon receipt of a completed Type I application the applicant will be sent an exam notification. If the Type I permit applicant fails to complete the exam within 180 days of the exam notification, the application shall be considered abandoned and the Division shall not retain the application.
- (R) A Type I renewal applicant must complete the exam, if required, within 180 days of the date of the renewal notification letter sent by the Division. Should the renewal applicant fail to complete the exam within 180 days of the date of the renewal letter, the application shall be considered abandoned and the Division shall not retain the application.

### **Section 3-7 Protection and Exhibition of Permits**

Permittees shall take every reasonable precaution to protect their permits from loss, theft, defacement, destruction or unauthorized duplication.

The loss or theft of any permit shall be reported immediately to the local law enforcement agency and to the Division.

Permits, or copies thereof, shall be exhibited in conformity with the following provisions:

- (A) Manufacturer - the permit shall be posted at the facility where explosives or blasting agents are manufactured. Manufacturing permits for bulk mix trucks shall be posted in the office of the permittee.
- (B) Dealer- the permit shall be posted in the office at the location where explosives or blasting agents are sold.

- (C) Purchaser - the permit or a copy of the permit must be displayed at magazine/warehouse where explosives or blasting agents are received and stored.
- (D) User - the permit shall be posted in the main office of explosives operations.
- (E) Storage - a copy of the permit must be displayed at the office, warehouse, or in at least one magazine where explosives or blasting agents are received for storage.
- (F) A Type I permit card shall be carried by the Type I permittee at all times when using, transporting, or possessing explosives and presented to representatives of the Division and law enforcement officials, upon request, along with valid personal identification.

### **Section 3-8 Records of Transactions**

All permittees shall keep a complete record of all transactions in, or operations involving explosives for five years following the year in which the transactions or operations involving explosives or blasting agents occurred. The permittees must retain copies thereof and furnish such copies to the Division during normal business hours upon request. When the permittee is employed by another person who holds a valid permit, the records of the employer shall be deemed to satisfy these record-keeping requirements.

#### **3-8-1 Manufacturer**

The records of a person having a permit to manufacture explosives or blasting agents shall include the following information:

- (A) Amount and kinds manufactured.
- (B) Amounts and kinds acquired for manufacture.
- (C) Names and addresses of the persons from whom acquired and dates on which acquired.
- (D) Amount and kinds sold or otherwise disposed of.
- (E) Names, addresses and permit numbers of persons to whom sold or otherwise disposed of and dates of the sales or other dispositions.
- (F) Amounts and kinds on hand at each location at the end of each day on which there are transactions or operations.
- (G) The records kept in accordance with Section 6-1(U) shall meet the record requirements for the manufacture of binary products.

#### **3-8-2 Dealer**

The records of a person having a permit for dealer shall include the following information:

- (A) Amounts and kinds acquired.
- (B) Names and addresses of persons from whom acquired and dates on which acquired.
- (C) Amounts and kinds sold or otherwise disposed of.

- (D) Names, addresses, and permit numbers of persons to whom sold or otherwise disposed of and the dates of sales or other dispositions. This requirement shall not apply to the sale of smokeless powder.

### **3-8-3 Type II Permit**

A person holding a Type II permit to use explosives or blasting agents shall maintain a record of all explosive material transactions including a daily inventory record of all explosives received, removed from, or returned to each storage magazine in accordance with Section 4-1(F)(6) of these regulations, and records completed by Type I permittees in accordance with Section 6-1(U) and Section 7-4(B)(11).

### **3-8-4 Type I Permit**

Type I permittees shall complete and sign records of explosives used in accordance with Section 6-1(U) or Section 7-4(B)(11) of these regulations.

## **Section 3-9 Permit Changes**

The Division shall be notified immediately when:

- (A) There is a change in the permittee's permanent address.
- (B) There is a change in the name of a permittee, or a change in the Type I permitted owner(s), manager(s), or other designated individual(s) acting as the responsible person of any Type II or Type III permittee.
- (C) The location of an explosives storage facility is changed or added and the address of the new location shall be provided.
- (D) There is a change in the Type II permitted employer or association for whom the Type I permittee will possess and control explosive materials.
- (E) There is a change in the Type I permitted individuals authorized to possess and control explosives on behalf of a Type II permittee.
- (F) A Type I Permit holder is currently charged with, has a pending charge of or has been convicted of any of the offenses listed in 3-3 (B) 1-3.

## **Section 3-10 Explosives Sales to Permittees**

- (A) When an order for explosives is placed by a purchaser, the dealer shall request proper authorization and identification from the purchaser and shall record the purchaser's permit number on the sales record.
- (B) The purchaser shall provide to the dealer a list of Type I permittees authorized to order and receive explosives on behalf of the purchaser. A dealer shall not distribute explosive materials to a company or individual on the order of a person who does not appear on the most current list of authorized Type I permittees, and if the person does appear on the list, the dealer shall verify the identity of such person.
- (C) The authorized Type I permittee who physically receives the purchased explosives shall present his permit and proper identification to the dealer. The receiver of the explosives shall sign a receipt documenting the explosives received with his legal signature and permit number.

- (D) All such receipts shall be retained by the dealer for not less than 5 years from the date of purchase.
- (E) The dealer shall keep a record of all explosives purchased and sold as required by federal regulations.
- (F) Any package containing any explosive or blasting agent that is sold or is delivered for shipment by a dealer shall be properly labeled in accordance with 9-6-105 C.R.S. to indicate its explosive classification.

## **ARTICLE 4     STORAGE OF EXPLOSIVE MATERIALS**

### **Section 4-1     General Requirements**

- (A) All explosive materials, special industrial explosive materials, and any newly developed and unclassified explosive materials shall be kept in magazines which meet the requirements as defined in these regulations, unless they are in the process of manufacture, being physically handled in the operating process, being used, or being transported to a place of storage or use. Refer to Section 4-3 for a summary of storage requirements.
- (B) High explosives shall not be stored unattended outdoors, or in any building or structure, except in a Type 1 or Type 2 magazine.
- (C) Detonators that will not mass detonate (1.4s and 1.4b classification) and are in the original and closed shipping container may also be stored in a Type 4 magazine.
- (D) The requirements for the storage of binary explosives shall be:
  - (1) Storage of the flammable liquid component of a binary explosive shall be in secure storage that complies with the uniform fire code.
  - (2) Storage of the powder component of a binary explosive shall be in secure storage.
  - (3) Liquid and powder components shall not be stored together.
- (E) Detonators shall not be stored in the same magazine in which other explosives are kept or stored except under the following circumstances:
  - (1) In a Type 1 or Type 2 magazine, detonators may be stored with delay devices, electric squibs, safety fuse, igniters, and igniter cord.
  - (2) In a Type 4 magazine, detonators that will not mass detonate (1.4s and 1.4b classification) may be stored with electric squibs, safety fuse, igniters, and igniter cord.
- (F) Inventory and Responsibility
  - (1) Magazines shall be in the charge of a valid permittee at all times who shall be held responsible for the enforcement of all safety precautions.
  - (2) All explosives shall be accounted for at all times.
  - (3) Explosives not being used shall be kept in a locked magazine and the keys or combinations to the locks shall be unavailable to persons not holding a valid Type I permit.
  - (4) The Type II permittee shall maintain an inventory and use record of all explosive materials.
  - (5) Type I permittees shall record any receipt, removal, or return of explosives materials on inventory records within the magazine or at one central location on the business premises provided that transactions for each magazine are kept separate.
  - (6) The inventory records shall be maintained on forms approved by the Division and shall include:
    - (i) Type of explosive material product



- (ii) Manufacturer's name or brand name
- (iii) Identifying or date shift code
- (iv) Amounts received, removed from or returned to the magazine
- (v) The signature of the permittee receiving, removing or returning explosive materials
- (vi) Total quantity remaining on hand
- (7) Explosive materials shall be physically counted at least monthly.
- (8) Explosive materials sold and received in individual unit quantities shall be inventoried as individual units.
- (9) Explosive materials sold and received as pounds shall be inventoried as pounds when in unopened cases, and as individual cartridges or units when in opened cases.
- (10) The Federal Bureau of Alcohol, Tobacco, Firearms and Explosives, the Division, and local law enforcement agencies shall be notified immediately of any loss, theft, or unauthorized entry into a magazine.
- (G) Surrounding Area
  - (1) The land surrounding a magazine shall be kept clear of trash, dried grass, leaves or trees (except for live trees more than 10 feet tall) for a distance of at least 25 feet. Living foliage used to stabilize the earthen coverings of a magazine need not be removed.
  - (2) Any other combustible materials shall not be stored within 50 feet of magazines.
  - (3) Smoking, matches or an open flame shall not be permitted:
    - (i) In any magazine;
    - (ii) Within 50 feet of any outdoor magazine; or
    - (iii) Within any room containing an indoor magazine.
  - (4) Firearms shall not be permitted inside of, or within 50 feet of magazines.
  - (5) The premises on which all outdoor magazines are located shall be posted with signs with the words "DANGER—KEEP OUT" in letters at least 3 inches high. Signs shall be posted to warn any person approaching the magazine of the hazard, but shall be located so that a bullet passing through the sign will not strike the magazines.
  - (6) All normal access routes to outdoor explosives storage sites shall be posted with a sign with the words "DANGER- NEVER FIGHT FIRES ON THIS SITE. CALL \_\_\_\_\_" in letters at least 2 inches high. An emergency contact number shall be written on the sign.
  - (7) Indoor magazines shall be visibly marked with the words "DANGER – KEEP FIRE AWAY."
- (H) Temporary storage at a site for blasting operations shall be located away from neighboring inhabited buildings, railways, highways, and other magazines in accordance with the American Table of Distances (see Section 4-5).
- (I) Storage Within Magazines

- (1) Packages of explosive materials shall be laid flat with top side up. Corresponding grades and brands shall be stored together in such a manner that brands and grade marks show. All stocks shall be stored so as to be easily counted and checked. Packages of explosives shall be stacked in a stable manner. When any kind of explosive is removed from a magazine for use, the oldest of that particular kind shall always be taken first.
- (2) Packages of explosives requiring impact or potentially spark producing methods to open or to close shall not be opened or closed in a magazine, nor within 50 feet of a magazine or in close proximity to other explosive materials.
- (3) Tools used for opening packages of explosives shall be constructed of non-sparking materials.
- (4) Opened packages of explosives shall be securely closed before being returned to a magazine.
- (5) Magazines shall not be used for the storage of any metal tools nor any commodity except explosives; however, this restriction shall not apply to the storage of blasting agents and non-metal blasting supplies.
- (6) Magazine floors shall be regularly swept, kept clean, dry, and free of grit, paper, empty used packages, and rubbish. Brooms and other cleaning utensils shall not have any spark-producing metal parts. Sweepings from floors of magazines shall be properly disposed of. Magazine floors stained with nitroglycerin shall be cleaned according to instructions of the manufacturer.
- (7) When any explosive has deteriorated to an extent that it is in an unstable or dangerous condition, or if nitroglycerin leaks from any explosives, then the person in possession of such explosives shall immediately proceed to destroy such explosives in accordance with the instructions of the manufacturer. Only Type I permittees experienced in the destruction of explosive materials shall be allowed to do the work of destroying explosives.
- (8) When magazines need inside repairs, all explosives shall be removed and the floors cleaned. In making outside repairs, if there is a possibility of causing sparks or fire the explosives shall be removed from the magazine. Explosives removed from a magazine in order for repair shall either be placed in another class appropriate magazine, or placed a safe distance from the magazine where they shall be properly guarded and protected until repairs have been completed, at which time they shall be returned to the magazine.
- (9) Explosive materials within a magazine are not to be placed against the interior walls and must be stored so as not to interfere with ventilation when required.
- (10) Any person storing explosive materials shall open and inspect the magazine at least every 7 days. This inspection need not be an inventory, but must be sufficient to determine whether there has been unauthorized entry or attempted entry into the magazine, or unauthorized removal of the contents.
- (11) Flammables, such as the liquid components of binary products, shall not be stored with other explosives.

(J) Lighting Within Magazines

- (1) Battery-activated safety lights or battery-activated safety lanterns may be used in explosives storage magazines.
- (2) Electric lighting, including wiring and fixtures, used in any explosives storage magazine must meet the standards prescribed by the National Electrical Code for the conditions present in

the magazine at any time. All electrical switches are to be located outside of the magazine and also meet the standards prescribed by the National Electrical Code.

- (3) Light fixtures shall be enclosed to prevent sparks or hot metal from falling on the floor or on materials stored in the magazine.
- (4) Interior magazine lights shall be turned off when the magazine is unattended.
- (5) Copies of invoices, work orders or similar documents which indicate that the lighting complies with the National Electrical Code must be available for inspection by the Division.

#### **Section 4-2 Classes of Explosive Materials and Examples**

For the purposes of this article, there are three classes of explosive materials. These classes, together with the description of explosive materials comprising each class, are as follows:

- (A) High Explosives - Explosive materials which can be caused to detonate by means of a detonator when unconfined. Examples include:
  - (1) Dynamite and detonators;
  - (2) Detonator-sensitive slurry/water gels and emulsions; and
  - (3) Mixed binaries.
- (B) Low Explosives - Explosive materials which can be caused to deflagrate when confined. Examples include:
  - (1) Black powder;
  - (2) Pull wire igniters; and
  - (3) Safety fuse.
- (C) Blasting Agents - Explosives materials consisting of fuel and oxidizer which cannot be detonated by means of a number 8 test detonator when unconfined. Examples include:
  - (1) Ammonium Nitrate/Fuel Oil mixture (ANFO); and
  - (2) Non detonator-sensitive slurry/water gels and emulsion products.

#### **Section 4-3 Summary of Storage Requirements**

<b>Table 4-3</b>	<b>Summary of Storage Requirements</b>	
<b>Storage Type</b>	<b>Classes of Explosive Materials Which May Be Stored Therein</b>	
Type 1 (Permanent)	High Explosives, Low Explosives, Blasting Agents	
Type 2 (Portable, Mobile or Fixed)	High Explosives, Low Explosives, Blasting Agents	
Type 3 ("Day Box" for Temporary Storage)	High Explosives, Low Explosives, Blasting Agents	
Type 4 (Portable, Mobile or Fixed)	Blasting Agents, Low Explosives, Detonators (Original, Closed Cartons of 1.4b, 1.4c And 1.4s)	

Type 5 (Portable, Mobile or Fixed)	Blasting Agents
---------------------------------------	-----------------

#### Section 4-4 Storage Magazine Construction by Type

Table 4-4	Storage Magazine Construction By Type				
Construction Features	Type 1	Type 2	Type 3	Type 4	Type 5
Permanent	X			X	X
Portable or Mobile		X	X	X	X
Bullet-Resistant	X	X			
Fire-Resistant	X	X	X	X	X <sup>(1)</sup>
Theft-Resistant	X	X	X	X	X
Weather-Resistant	X	X	X	X	X
Ventilated	X	X		X	

<sup>(1)</sup> Over the road trucks or semi-trailers used as Type 5 magazines for temporary storage need not be fire resistant.

##### 4-4-1 Type 1 Storage

A Type 1 magazine shall be a permanent structure, e.g., a building, an igloo or Army-type structure, a tunnel, or a dugout. It shall be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and ventilated.

- (A) Buildings: All building-type magazines shall be constructed of masonry, wood, metal, or a combination of these materials and shall have no openings except for entrances and ventilation. The ground around building magazines shall slope away for drainage or other adequate drainage shall be provided.
- (B) Masonry Wall Construction: Masonry wall construction shall consist of brick, concrete, tile, cement block, or cinder block and shall be not less than 8 inches in thickness. Hollow masonry units used in construction shall have all hollow spaces filled with well-tamped, coarse, dry sand or weak concrete (at least 1 part cement + 8 parts of sand with enough water to dampen the mixture while tamping in place). Interior walls shall be constructed of, or covered with, a non-sparking material.
- (C) Fabricated Metal Wall Construction: Metal wall construction shall consist of sectional sheets of steel or aluminum, not less than #14 gauge, securely fastened to a metal framework. Metal wall construction shall be either lined inside with brick, solid cement blocks, hardwood not less than 4 inches thick, or shall have at least a 6-inch sand-fill between interior and exterior walls. Interior walls shall be constructed of, or covered with, a non-sparking material.
- (D) Wood Frame Wall Construction: The exterior of outer wood walls shall be covered with steel or aluminum not less than #26 gauge. An inner wall of, or covered with, non-sparking material shall be constructed so as to provide a space of not less than 6 inches between the outer and inner walls. The space shall be filled with coarse, dry sand or weak concrete.
- (E) Floors: Floors shall be constructed of, or covered with, a non-sparking material and shall be strong enough to bear the weight of the maximum quantity materials to be stored. Use of pallets covered with a non-sparking material is considered equivalent to a floor constructed of, or covered with, a non-sparking material.
- (F) Foundations: Foundations shall be constructed of brick, concrete, cement block, stone, or wood posts. If piers or posts are used in lieu of a continuous foundation, the space under the buildings

shall be enclosed with metal.

- (G) Roof: Except for buildings with fabricated metal roofs, the outer roof shall be covered with no less than #26 gauge steel or aluminum fastened to 7/8-inch sheathing.
- (H) Bullet-Resistant Ceilings on Roofs: Where it is possible for a bullet to be fired directly through the roof and into the magazine at such an angle that the bullet would strike the explosives within, the magazine shall be protected by one of following methods:
  - (1) A sand tray with a layer of building paper, plastic, or other nonporous material filled with not less than 4 inches of coarse, dry sand, shall be located at the tops of inner walls covering the entire ceiling area, except that portion necessary for ventilation.
  - (2) A fabricated metal roof shall be constructed of 3/16-inch thick plate steel lined with 4 inches of hardwood. For each additional 1/16-inch of plate steel, the hardwood lining may be decreased by 1 inch.
- (I) Doors: All doors shall be constructed of 1/4-inch plate steel and lined with 3 inches of hardwood. Hinges and hasps shall be attached to the doors by welding, riveting, or bolting (with nuts on the inside of the door). They shall be installed in such a manner that the hinges and hasps cannot be removed when the doors are closed and locked.
- (J) Locks: Each door shall be equipped with at least one of the following types of locks:
  - (1) Two mortise locks
  - (2) Two padlocks fastened in separate hasps and staples
  - (3) A combination of a mortise lock and a padlock
  - (4) A mortise lock that requires two keys to open
  - (5) A three-point lock.

Padlocks shall have at least 5 tumblers and a case-hardened shackle of at least 3/8-inch in diameter. Padlocks shall be protected with 1/4-inch sheet hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements shall not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.
- (K) Ventilation: Ventilation shall be provided to prevent dampness and heating of stored explosive materials. Ventilation openings shall be screened to prevent the entrance of sparks. Ventilation openings in sidewalls and foundations shall be offset or shielded for bullet-resistance purposes. Magazines having foundation and roof ventilators with the air circulating between the side walls and the floors and between the side walls and the ceiling shall have a wooden lattice lining or equivalent to prevent the packages of explosive materials from being stacked against the side walls and blocking the air circulation.
- (L) Exposed Metal: No sparking material shall be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and sidewalls which might be exposed to contact with explosive materials shall be blind-nailed, countersunk, or covered with a non-sparking latticework or other non-sparking material.
- (M) Igloos, Army-Type Structures, Tunnels, & Dugouts: Igloo, army-type structure, tunnel, and dugout magazines shall be constructed of reinforced concrete, masonry, metal, or a combination of these materials. They shall have an earth mound covering of not less than 24 inches on the top, sides,

and rear unless the ceiling or roof meets the bullet-resistant ceiling or roof requirements of this section. Interior walls shall be constructed of, or covered with, a non-sparking material. Magazines of this type shall also be constructed in conformity with the requirements of the floors, doors, locks, ventilation, and exposed metal portions outlined in this section.

#### **4-4-2 Type 2 Storage**

A Type 2 magazine shall be a portable or mobile structure such as a box, skid-magazine, trailer, or semi-trailer.

##### **4-4-2-1 Outdoor Type 2 Magazines**

Outdoor Type 2 magazines shall be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and ventilated. They shall be supported to prevent direct contact with the ground and, if less than 1 cubic yard in size, shall be securely fastened to a fixed object. The ground around outdoor magazines shall slope away for drainage or other adequate drainage shall be provided. When unattended, vehicular magazines shall have wheels removed or shall otherwise be effectively immobilized by methods approved by the Division.

- (A) Exterior Construction: The exterior and covers or doors shall be constructed of 1/4-inch steel and shall be lined with 2 inches of hardwood. Magazines with top openings shall have lids with water-resistant seals or which overlap the sides by at least 1 inch when in a closed position.
- (B) Hinges & Hasps: Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (with nuts on the inside of the door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.
- (C) Locks: Each door shall be equipped with at least one of the following types of locks:
  - (1) Two mortise locks
  - (2) Two padlocks fastened in separate hasps and staples
  - (3) A combination of a mortise lock and a padlock
  - (4) A mortise lock that requires two keys to open
  - (5) A three-point lock.

Padlocks shall have at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter. Padlocks shall be protected with 1/4-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

- (D) Ventilation: Ventilation shall be provided to prevent dampness and heating of stored explosive materials. Ventilation openings shall be screened to prevent the entrance of sparks. Ventilation openings in sidewalls shall be offset or shielded for bullet-resistance purposes. Packages of explosive materials shall not be stacked against the side walls and block the air circulation.

##### **4-4-2-2 Indoor Type 2 Magazines**

Indoor Type 2 magazines shall be fire-resistant and theft-resistant if the buildings in which they are stored provide protection from the weather and from bullet penetration. No indoor magazine may be located in a residence or dwelling. The indoor storage of high explosives may not exceed a quantity of 50 pounds.

More than one indoor magazine may be located in the same building if the total quantity of all explosive materials stored does not exceed 50 pounds. Detonators shall be stored in separate magazines.

(A) Exterior Construction: Indoor magazines shall be constructed of wood or metal according to one of the following specifications:

- (1) Indoor magazines constructed of wood shall have sides, bottoms, and lids or doors constructed of two-inch wood and shall be well-braced at the corners. The magazines shall be covered on the exterior with sheet metal of not less than #26-gauge. Nails exposed to the interior of magazines shall be countersunk.
- (2) Indoor magazines constructed of metal shall have sides, bottom, and lids or doors constructed of at least #12-gauge metal and shall be lined inside with a non-sparking material. Edges of metal covers shall overlap sides at least 1 inch.

(B) Hinges & Hasps: Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (with nuts on the inside of the door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(C) Locks: Each door shall be equipped with at least one of the following types of locks:

- (1) Two mortise locks
- (2) Two padlocks fastened in separate hasps and staples
- (3) A combination of a mortise lock and a padlock
- (4) A mortise lock that requires two keys to open
- (5) A three-point lock.

Padlocks shall have at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter. Padlocks shall be protected with 1/4-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. Indoor magazines located in secure rooms, that are locked as provided in this paragraph, may have each door or opening locked with 1 steel padlock (which need not be protected by a steel hood) having at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

#### **4-4-3 Alternate Construction Standards for Storage Facilities**

It has been determined that a wide range of construction criteria meet the bullet-resistant requirements of ATF Rule 76-18 as published in Bureau Of Alcohol, Tobacco, Firearms, and Explosives, Department Of The Treasury, Publication ATF p 5400.7 (2012) for the construction of storage facilities for explosive materials.

In order to promote standards of safety and security in the storage of explosive materials while allowing the industry a wide latitude in the selection of construction materials, it is held that storage facilities (magazines) that are constructed according to the following minimum specifications are bullet-resistant and meet the requirements of the regulations as set forth in 27 CFR Part 55 (all steel and wood dimensions are actual thicknesses. To meet the concrete block and brick dimensions indicated, the manufacturers' represented thicknesses may be used).

(A) Exterior of 5/8-inch steel, lined with an interior of any type of non-sparking material.

- (B) Exterior of 1/2-inch steel, lined with an interior of not less than 3/8-inch plywood.
- (C) Exterior of 3/8-inch steel, lined with an interior of 2 inches of hardwood.
- (D) Exterior of 3/8-inch steel, lined with an interior of 3 inches of softwood or 2¼ inches of plywood.
- (E) Exterior of 1/4-inch steel, lined with an interior of 3 inches of hardwood.
- (F) Exterior of 1/4-inch steel, lined with an interior of 5 inches of softwood or 5¼ inches of plywood.
- (G) Exterior of 1/4-inch steel, lined with an intermediate layer of 2 inches of hardwood and an interior lining of 1½ inches of plywood.
- (H) Exterior of 3/16-inch steel, lined with an interior of 4 inches of hardwood.
- (I) Exterior of 3/16-inch steel, lined with an interior of 7 inches of softwood or 6¾ inches of plywood.
- (J) Exterior of 3/16-inch steel, lined with an intermediate layer of 3 inches of hardwood and an interior lining of 3/4-inch of plywood.
- (K) Exterior of 1/8-inch steel, lined with an interior of 5 inches of hardwood.
- (L) Exterior of 1/8-inch steel, lined with an interior of 9 inches of softwood.
- (M) Exterior of 1/8-inch steel, lined with an intermediate layer of 4 inches of hardwood and an interior lining of 3/4-inch plywood.
- (N) Exterior of any type of fire-resistant material which is structurally sound, lined with an intermediate layer of 4 inches of solid concrete block, or 4 inches of solid brick or 4 inches of solid concrete; and, an interior lining of 1/2-inch plywood placed securely against the masonry lining.
- (O) Standard 8-inch concrete block with voids filled with well-tamped sand/cement mixture.
- (P) Standard 8-inch solid brick.
- (Q) Exterior of any type of fire-resistant material which is structurally sound, lined with an intermediate 6-inch space filled with well-tamped dry sand or well-tamped sand/cement mixture.
- (R) Exterior of 1/8-inch steel, lined with a first intermediate layer of 3/4-inch plywood, a second intermediate layer of 3½ inches of well-tamped dry sand or sand/cement mixture and an interior lining of 3/4-inch plywood.
- (S) Second intermediate layer of 3½ inches well tamped dry sand or sand/cement mixture, a third intermediate layer of 3/4-inch plywood, and a fourth intermediate layer of two inches of hardwood or #14 gauge steel and an interior lining of 3/4-inch plywood.
- (T) 8-inch thick solid concrete.

#### **4-4-4 Type 3 Storage**

A Type 3 magazine shall be a "day-box" or other portable magazine. It shall be fire-resistant, weather-resistant, and theft-resistant. A Type 3 magazine shall be constructed of #12-gauge metal lined with either 1/2-inch plywood or 1/2-inch Masonite-type hardboard. Doors shall overlap sides by at least 1 inch. Hinges and hasps shall be attached by welding, riveting or bolting (with nuts on the inside of the door). A single lock having at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter shall be sufficient for locking purposes. Explosive materials may not be left unattended in Type 3 magazines, but



must be removed to either a Type 1 or 2 magazine for unattended storage.

#### **4-4-5 Type 4 Storage**

A Type 4 magazine shall be a building, igloo or army-type structure, tunnel, dugout, box, trailer, or a semi-trailer or other mobile magazine.

##### **4-4-5-1 Outdoor Type 4 Magazines**

Outdoor Type 4 magazines shall be fire-resistant, weather-resistant, theft-resistant, ventilated and shall be at least 1 cubic yard in size, or securely fasted to a fixed object. The ground around outdoor magazines shall slope away for drainage or other adequate drainage shall be provided. When unattended, vehicular magazines shall have wheels removed or shall otherwise be effectively immobilized by other methods approved by the Division.

- (A) Construction: Outdoor magazines shall be constructed of masonry, metal-covered wood, fabricated metal, or a combination of these materials. Foundation shall be constructed of brick, concrete, cement block, stone, or metal or wood posts. If piers or posts are used in lieu of a continuous foundation, the space under the buildings shall be enclosed with fire-resistant material. The walls and floors shall be constructed of, or covered with, a non-sparking material or lattice work. The doors or covers shall be metal or solid wood covered with metal.
- (B) Hinges and Hasps: Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.
- (C) Locks: Each door shall be equipped with at least one of the following types of locks:
  - (1) 2 mortise locks
  - (2) 2 padlocks fastened in separate hasps and staples
  - (3) A combination of a mortise lock and a padlock
  - (4) A mortise lock that requires two keys to open
  - (5) A three-point lock.

Padlocks shall have at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter. Padlocks shall be protected with 1/4-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or a bar that cannot be actuated from the outside.

- (D) Ventilation: Ventilation shall be provided to prevent dampness and heating of stored explosive materials. Ventilation openings shall be offset or shielded and screened to prevent the entrance of sparks. The packages of explosive materials shall not be stacked against the side walls and block the air circulation.

##### **4-4-5-2 Indoor Type 4 Magazines**

Indoor magazines shall be fire-resistant and theft-resistant. They need not be weather-resistant if the buildings in which they are stored provide protection from the weather. No indoor magazine may be located in a residence or dwelling. The indoor storage of low explosives may not exceed a quantity of 50 pounds. More than one indoor magazine may be located in the same building if the total quantity of all

explosive materials stored does not exceed 50 pounds. Detonators that will not mass detonate shall be stored in separate magazines and the total number of detonators may not exceed 5,000.

- (A) Construction: Indoor magazines shall be constructed of masonry, metal-covered wood, fabricated metal, or a combination of these materials. The walls and floors shall be constructed of, or covered with, a non-sparking material. The doors or covers shall be metal or solid wood covered with metal.
- (B) Hinges & Hasps: Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (with nuts on the inside of the door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.
- (C) Locks: Each door shall be equipped with at least one of the following types of locks:
  - (1) 2 mortise locks
  - (2) 2 padlocks fastened in separate hasps and staples
  - (3) A combination of a mortise lock and a padlock
  - (4) A mortise lock that requires two keys to open
  - (5) A three-point lock.

Padlocks shall have at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter. Padlocks shall be protected with 1/4-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. Indoor magazines located in secure rooms, that are locked as provided in this paragraph, may have each door or opening locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least 3/8-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

#### **4-4-6 Type 5 Storage**

A Type 5 magazine shall be a building, igloo or army-type structure, tunnel, dugout, bin, box, trailer, or a semitrailer or other mobile facility.

##### **4-4-6-1 Outdoor Type 5 Magazines**

Outdoor Type 5 magazines shall be weather-resistant, fire-resistant and theft-resistant. Over-the-road trucks or semi-trailers used as Type 5 magazines for temporary storage need not be fire-resistant. The ground around magazines shall slope away for drainage or other adequate drainage shall be provided. When unattended, vehicular magazines shall have wheels removed or shall otherwise be effectively immobilized by kingpin locking devices or other methods approved by the Division.

- (A) Construction: The doors or covers shall be constructed of solid wood or metal.
- (B) Hinges & Hasps: Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (with nuts on the inside of the door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.
- (C) Locks: Each door shall be equipped with 1 padlock having at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter. Indoor magazines located in secure rooms, that

are locked as provided in this paragraph, may have each door or opening locked with 1 steel padlock (which need not be protected by a steel hood) having at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock or bar that cannot be actuated from the outside.

#### **4-4-6-2 Indoor Type 5 Magazines**

Indoor Type 5 magazines shall be theft-resistant. They need not be weather-resistant if the buildings in which they are stored provide protection from the weather. No indoor magazine may be located in a residence or dwelling. Indoor magazines containing quantities of blasting agents in excess of 50 pounds shall be subject to the American Table of Distances in Section 4-5-1 of this subpart.

- (A) Construction: The doors or covers shall be constructed of wood or metal.
- (B) Hinges and Hasps: Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (with nuts on the inside of the door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.
- (C) Locks: Each door shall be equipped with 1 padlock having at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter.

Indoor magazines located in secure rooms that are locked as provided in this paragraph may have each door or opening locked with 1 steel padlock (which need not be protected by a steel hood) having at least 5 tumblers and a case-hardened shackle of at least 3/8-inch diameter if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock or bar that cannot be actuated from the outside.

#### **Section 4-5 Location of Magazines**

- (A) Outdoor magazines in which high explosives are stored shall be located no closer to inhabited buildings, passenger railways, public highways or other magazines in which high explosives are stored than the minimum distances specified in the American Table of Distances for Storage of Explosive Materials in Table 4-5-1.
- (B) Outdoor magazines in which low explosives are stored shall be located no closer to inhabited buildings, passenger railways, public highways or other magazines in which explosives are stored than the minimum distances specified in the American Table of Distances for Storage of Low Explosives in Table 4-5-2. The distances shown therein may not be reduced by the presence of barricades.
- (C) Outdoor magazines in which blasting agents are stored shall be located no closer to inhabited buildings, passenger railways or public highways than the minimum distances specified in the American Table of Distances for Storage of Explosive Materials in Table 4-5-1.
- (D) Ammonium nitrate and magazines in which blasting agents are stored shall be located no closer to magazines in which high explosives or other blasting agents are stored than the minimum distances specified in the American Table of Distances for the Separation of Ammonium Nitrate and Blasting Agents in Table 4-5-3. However, the minimum distances for magazines in which explosives and blasting agents are stored from inhabited buildings, passenger railways or public highways may not be less than the distances specified in the American Table of Distances for Storage of Explosive Materials in Table 4-5-1.

Table 4-5-1		American Table of Distances for Storage of Explosive Materials							
Quantity of Explosive Materials <sup>(1,2,3,4)</sup>		Distances in Feet							
		Inhabited Buildings <sup>(9)</sup>		Public Highways with Traffic Volume of less than 3,000 Vehicles/Day <sup>(11)</sup>		Passenger Railways-Public Highways with Traffic Volume of more than 3,000 Vehicles/Day <sup>(10, 11)</sup>		Separation of Magazines <sup>(12)</sup>	
Pounds Over	Pounds Not Over	Barricaded <sup>(6,7,8)</sup>	Unbarricaded	Barricaded <sup>(6,7,8)</sup>	Unbarricaded	Barricaded <sup>(6,7,8)</sup>	Unbarricaded	Barricaded <sup>(6,7,8)</sup>	Unbarricaded
0	5	70	140	30	60	51	102	6	12
5	10	90	180	35	70	64	128	8	16
10	20	110	220	45	90	81	162	10	20
20	30	125	250	50	100	93	186	11	22
30	40	140	280	55	110	103	206	12	24
40	50	150	300	60	120	110	220	14	28
50	75	170	340	70	140	127	254	15	30
75	100	190	380	75	150	139	278	16	32
100	125	200	400	80	160	150	300	18	36
125	150	215	430	85	170	159	318	19	38
150	200	235	470	95	190	175	350	21	42
200	250	255	510	105	210	189	378	23	46
250	300	270	540	110	220	201	402	24	48
300	400	295	590	120	240	221	442	27	54
400	500	320	640	130	260	238	476	29	58
500	600	340	680	135	270	253	506	31	62
600	700	355	710	145	290	266	532	32	64
700	800	375	750	150	300	278	556	33	66
800	900	390	780	155	310	289	578	35	70
900	1,000	400	800	160	320	300	600	36	72
1,000	1,200	425	850	165	330	318	636	39	78
1,200	1,400	450	900	170	340	336	672	41	82
1,400	1,600	470	940	175	350	351	702	43	86
1,600	1,800	490	980	180	360	366	732	44	88
1,800	2,000	505	1,010	185	370	378	756	45	90
2,000	2,500	545	1,090	190	380	408	816	49	98
2,500	3,000	580	1,160	195	390	432	864	52	104
3,000	4,000	635	1,270	210	420	474	948	58	116
4,000	5,000	685	1,370	225	450	513	1,026	61	122
5,000	6,000	730	1,460	235	470	546	1,092	65	130
6,000	7,000	770	1,540	245	490	573	1,146	68	136
7,000	8,000	800	1,600	250	500	600	1,200	72	144
8,000	9,000	835	1,670	255	510	624	1,248	75	150
9,000	10,000	865	1,730	260	520	645	1,290	78	156
10,000	12,000	875	1,750	270	540	687	1,374	82	164
12,000	14,000	885	1,770	275	550	723	1,446	87	174
14,000	16,000	900	1,800	280	560	756	1,512	90	180
16,000	18,000	940	1,880	285	570	786	1,572	94	188
18,000	20,000	975	1,950	290	580	813	1,626	98	196
20,000	25,000	1,055	2,000	315	630	876	1,752	105	210
25,000	30,000	1,130	2,000	340	680	933	1,866	112	224
30,000	35,000	1,205	2,000	360	720	981	1,962	119	238
35,000	40,000	1,275	2,000	380	760	1,026	2,000	124	248
40,000	45,000	1,340	2,000	400	800	1,068	2,000	129	258
45,000	50,000	1,400	2,000	420	840	1,104	2,000	135	270
50,000	55,000	1,460	2,000	440	880	1,140	2,000	140	280
55,000	60,000	1,515	2,000	455	910	1,173	2,000	145	290
60,000	65,000	1,565	2,000	470	940	1,206	2,000	150	300
65,000	70,000	1,610	2,000	485	970	1,236	2,000	155	310
70,000	75,000	1,655	2,000	500	1,000	1,263	2,000	160	320
75,000	80,000	1,695	2,000	510	1,020	1,293	2,000	165	330
80,000	85,000	1,730	2,000	520	1,040	1,317	2,000	170	340
85,000	90,000	1,760	2,000	530	1,060	1,344	2,000	175	350
90,000	95,000	1,790	2,000	540	1,080	1,368	2,000	180	360
95,000	100,000	1,815	2,000	545	1,090	1,392	2,000	185	370
100,000	110,000	1,835	2,000	550	1,100	1,437	2,000	195	390
110,000	120,000	1,855	2,000	555	1,110	1,479	2,000	205	410
120,000	130,000	1,875	2,000	560	1,120	1,521	2,000	215	430
130,000	140,000	1,890	2,000	565	1,130	1,557	2,000	225	450
140,000	150,000	1,900	2,000	570	1,140	1,593	2,000	235	470
150,000	160,000	1,935	2,000	580	1,160	1,629	2,000	245	490
160,000	170,000	1,965	2,000	590	1,180	1,662	2,000	255	510
170,000	180,000	1,990	2,000	600	1,200	1,695	2,000	265	530
180,000	190,000	2,010	2,010	605	1,210	1,725	2,000	275	550
190,000	200,000	2,030	2,030	610	1,220	1,755	2,000	285	570
200,000	210,000	2,055	2,055	620	1,240	1,782	2,000	295	590
210,000	230,000	2,100	2,100	635	1,270	1,836	2,000	315	630
230,000	250,000	2,155	2,155	650	1,300	1,890	2,000	335	670
250,000	275,000	2,215	2,215	670	1,340	1,950	2,000	360	720
275,000	300,000	2,275	2,275	690	1,380	2,000	2,000	385	770

Table: American Table of Distances for Storage of Explosive Materials as Revised and Approved by the Institute of Makers of Explosives – June 1991

Table 4-5-2		Table of Distance for the Storage of Low Explosives		
Quantity of Explosives (In Pounds)		Distance in Feet		
Over	Not Over	From Inhabited Buildings	From Public Railways and Highways	From Above Ground Magazine
0	1,000	75	75	50
1,000	5,000	115	115	75
5,000	10,000	150	150	100
10,000	20,000	190	190	125
20,000	30,000	215	215	145
30,000	40,000	235	235	155
40,000	50,000	250	250	165
50,000	60,000	260	260	175
60,000	70,000	270	270	185
70,000	80,000	280	280	190
80,000	90,000	295	295	195
90,000	100,000	300	300	200
100,000	200,000	375	375	250
200,000	300,000	450	450	300

Table: Department of Defense Ammunition and Explosives Standards, Table 5-4.1 Extract; 4145.27 M, March 1969

Table 4-5-3		Table of Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents <sup>1,6</sup>		
Donor Weight		Minimum Separation Distance of Acceptor when Barricaded <sup>2</sup> (ft.)		
Pounds Over	Pounds Not Over	Ammonium Nitrate <sup>3</sup>	Blasting Agent <sup>4</sup>	Minimum Thickness of Artificial Barricades <sup>5</sup> (in.)
	100	3	11	12
100	300	4	14	12
300	600	5	18	12
600	1,000	6	22	12
1,000	1,600	7	25	12
1,600	2,000	8	29	12
2,000	3,000	9	32	15
3,000	4,000	10	36	15
4,000	6,000	11	40	15
6,000	8,000	12	43	20
8,000	10,000	13	47	20
10,000	12,000	14	50	20
12,000	16,000	15	54	25
16,000	20,000	16	58	25
20,000	25,000	18	65	25
25,000	30,000	19	68	30
30,000	35,000	20	72	30
35,000	40,000	21	76	30
40,000	45,000	22	79	35
45,000	50,000	23	83	35
50,000	55,000	24	86	35
55,000	60,000	25	90	35
60,000	70,000	26	94	40
70,000	80,000	28	101	40
80,000	90,000	30	108	40
90,000	100,000	32	115	40
100,000	120,000	34	122	50
120,000	140,000	37	133	50
140,000	160,000	40	144	50
160,000	180,000	44	158	50
180,000	200,000	48	173	50
200,000	220,000	52	187	60
220,000	250,000	56	202	60
250,000	275,000	60	216	60
275,000	300,000	64	230	60

Table: National Fire Protection Association (NFPA) Official Standard No. 492, 1968

**Explanatory Notes Essential to the Application of the American Table of Distances  
for Storage of Explosive Materials**

- NOTE 1     “Explosive materials” means explosives, blasting agents and detonators.
- NOTE 2     “Explosives” means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. For quantity and distance purposes, detonating cord of 50 grains per foot should be calculated as equivalent to 8 lbs. of high explosives per 1,000 feet. Heavier or lighter core loads should be rated proportionately.
- NOTE 3     “Blasting agents” means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive provided that the finished product as mixed for use or shipment, cannot be detonated by means of a No.8 test blasting cap when unconfined.
- NOTE 4     “Detonator” means any device containing any initiating or primary explosive that is used for initiating detonation. A detonator may not contain more than 10 grams of total explosives by weight, excluding ignition or delay charges. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, electronic detonators, blasting caps for use with safety fuses, detonating cord delay connectors, and non-electric instantaneous and delay blasting caps which use detonating cord, shock tube, or any other replacement for electric leg wires. All types of detonators in strengths through No.8 cap should be rated at 1 1/2 lbs. of explosives per 1,000 caps. For strengths higher than No.8 cap consult the manufacturer.
- NOTE 5     “Magazine” means any building, structure, or container, other than an explosives manufacturing building, approved for the storage of explosive materials.
- NOTE 6     “Natural Barricade” means natural features of the ground such as hills, or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the magazine when the trees are bare of leaves.
- NOTE 7     “Artificial Barricade” means an artificial mound or wall of earth of a minimum thickness of three feet.
- NOTE 8     “Barricaded” means the effective screening of a building containing explosive materials from the magazine or other building, railway, or highway by a natural or an artificial barrier. A straight line from the top of any sidewall of the building containing explosive materials to the eave line of any magazine or other building or to a point twelve feet above the center of a railway or highway shall pass through such barrier.
- NOTE 9     “Inhabited Building” means a building regularly occupied in whole or part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building or structure occupied in connection with the manufacture, transportation, storage or use of explosive materials.
- NOTE 10    “Railway” means any steam, electric, or other railroad or railway which carries passengers for hire.
- NOTE 11    “Highway” means any public street, public alley, or public road.

- NOTE 12 When two or more storage magazines are located on the same property, each magazine must comply with the minimum distances specified from inhabited buildings, railways and highways, and, in addition, they should be separated from each other by not less than the distances shown for "Separation of Magazines," except that the quantity of explosive materials contained in detonator magazines shall govern in regard to the spacing of said detonator magazines from magazines containing other explosive materials. If any two or more magazines are separated from each other by less than the specified "Separation of Magazines" distances, then such two or more magazines, as a group, must be considered as one magazine, and the total quantity of explosive materials stored in such group must be treated as if stored in a single magazine located on the site of any magazine of the group, and must comply with the minimum of distances specified from other magazines, inhabited buildings, railways, and highways.
- NOTE 13 Storage in excess of 300,000 lbs. of explosive materials, in one magazine is generally not required for commercial enterprises.
- NOTE 14 This Table applies only to the manufacture and permanent storage of commercial explosive materials. It is not applicable to transportation of explosives or any handling or temporary storage necessary or incident thereto. It is not intended to apply to bombs, projectiles, or other heavily encased explosives.
- NOTE 15 When a manufacturing building on an explosive materials plant site is designed to contain explosive materials, such building shall be located from inhabited buildings, public highways and passenger railways in accordance with the American Table of Distances based on the maximum quantity of explosive materials permitted to be in the building at one time.

### **American Table of Distances**

The American Table of Distances applies to the manufacture and permanent storage of commercial explosive materials. The distances specified are those measured from the explosive materials storage facility to the inhabited building, highway or passenger railway, irrespective of property lines.

The American Table of Distances covers all commercial explosive materials, including, but not limited to, high explosives, blasting agents, detonators, initiating systems and explosives materials in process. The Table is not designed to be altered or adjusted to accommodate varying explosive characteristics such as blast effect, weight strength, density, bulk strength, detonation velocity, etc.

The American Table of Distances should not be used to determine safe distances for blasting work, the firing of explosive charges for testing or quality control work, or the open detonation of waste explosive materials. The American Table of Distances may be utilized as a guide for developing distances for the unconfined, open burning of waste explosive materials where the probability of transition from burning to high order detonation is improbable.

## **Notes to Table of Recommended Separation Distances of Ammonium Nitrate and Blasting Agents from Explosives or Blasting Agents**

- NOTE 1 Recommended separation distances to prevent explosion of ammonium nitrate and ammonium nitrate-based blasting agents by propagation from nearby stores of high explosives or blasting agents referred to in the Table as the "donor." Ammonium nitrate, by itself, is not considered to be a donor when applying this Table. Ammonium nitrate, ammonium nitrate-fuel oil or combinations thereof are acceptors. If Stores of ammonium nitrate are located within the sympathetic detonation distance of explosives or blasting agents, one-half the mass of the ammonium nitrate should be included in the mass of the donor.
- NOTE 2 When the ammonium nitrate and/or blasting agent is not barricaded, the distances shown in the Table shall be multiplied by six. These distances allow for the possibility of high velocity metal fragments from mixers, hoppers, truck bodies, sheet metal structures, metal containers, and the like which may enclose the "donor." Where storage is in bullet-resistant magazines is recommended for explosives or where the storage is protected by a bullet-resistant wall, distances and barricade thicknesses in excess of those prescribed in the American Table of Distances are not required.
- NOTE 3 The distances in the Table apply to ammonium nitrate and ammonium nitrate based materials that show "negative" (-) result in the UN Test Series 2 Gap Test and show "positive" (+) result in the UN Test Series 1 Gap Test. Ammonium nitrate and ammonium nitrate based materials that are DOT hazard Class 1 sensitive shall be stored at separation distances determined by the American Table of Distances.
- NOTE 4 These distances apply to blasting agents which pass the insensitivity test prescribed in regulations of the U.S. Department of Transportation and the U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms.
- NOTE 5 Earth, or sand dikes, or enclosures filled with the prescribed minimum thickness of earth or sand are acceptable artificial barricades. Natural barricades, such as hills or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the "donor" when the trees are bare of leaves, are also acceptable.
- NOTE 6 For determining the distances to be maintained from inhabited buildings, passenger railways, and public highways, use the American Table of Distances for Storage of Explosives Materials on pages 58 and 59.

\*For construction of bullet-resistant magazines see Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Publication ATF P 5400.7 (9/00), *ATF-Explosives Law and Regulations*.



## **ARTICLE 5     TRANSPORTATION OF EXPLOSIVES**

### **Section 5-1     General Requirements**

- (A) Transportation of explosives, blasting agents, and blasting supplies on public highways, railways, and airways shall be in accordance with the provisions of Title 42 Article 20 C.R.S. and any regulations promulgated pursuant thereto and Title 49 CFR Parts 171-179 and Parts 390-397, Motor Carriers.
- (B) Requirements for the transportation of explosives, blasting agents and blasting supplies by motorized vehicle or conveyance on job sites shall be:
  - (1) No person shall smoke, carry matches or any other flame-producing device or carry firearms or loaded cartridges while in or near a motor vehicle or conveyance transporting explosives.
  - (2) No person shall drive, load or unload a vehicle or conveyance transporting explosives in a careless or reckless manner.
  - (3) Vehicles or conveyances transporting explosives, blasting agents or blasting supplies shall not be taken inside a garage or shop for repairs or servicing.
  - (4) Vehicles or conveyances used for transporting explosives shall be equipped to carry the load without difficulty and shall be in good mechanical condition.
  - (5) A motor vehicle or conveyance used for transporting explosives shall be given the following inspection prior to the transportation to determine that it is in proper condition for the safe transportation of explosives:
    - (i) Fire extinguishers shall be filled and in proper working order;
    - (ii) All electrical wiring shall be completely protected and securely fastened to prevent short-circuiting;
    - (iii) Chassis, motor, pan and underside of body shall be completely free of excess oil and grease;
    - (iv) Fuel tank and fuel line shall be secure and have no leaks;
    - (v) Brakes, lights, horn, windshield wipers and steering apparatus shall function properly;
    - (vi) Tires shall be checked for proper inflation and defects; and
    - (vii) The vehicle shall be in proper condition in every other respect and acceptable for handling explosives.
  - (6) All vehicles or conveyances used for transporting explosives shall have tight floors, and any exposed spark-producing metal on the inside of the body shall be covered with wood or other non-sparking materials to prevent contact with packages of explosives.
  - (7) Packages of explosives or blasting agents shall not be loaded above the sides of an open-body vehicle or conveyance.
  - (8) Explosives shall not be transported with other materials or cargoes in the same compartment. In no case shall flammable materials be carried on the same vehicle as explosives, with the exception of desensitizing agents.

- (9) Each vehicle or conveyance used for transportation of explosives shall be equipped with at least one charged fire extinguisher each with an extinguisher rating of at least 4-A:10B:C. Extinguishers shall be located where they will be accessible for immediate use.
- (10) Explosives shall be transferred from a disabled vehicle or conveyance to another vehicle or conveyance only when proper and qualified supervision is provided. Local fire departments and police departments shall be notified if a transfer occurs in a congested area. In remote areas, they shall be notified if appropriate.
- (11) A motorized vehicle or conveyance which contains explosives or detonators shall not be parked under any of the following circumstances:
  - (i) On or within 5 feet of the traveled portion of a public street or highway; or
  - (ii) Within 300 feet of a bridge, tunnel, building, or place where people work, assemble, or congregate, except for brief periods when the necessities of operation require the vehicle or conveyance to be parked and make it impracticable to park the vehicle or conveyance in any other place.
- (12) A motorized vehicle or conveyance transporting explosives, detonators, or blasting agents shall not be left unattended.
- (13) A motorized vehicle or conveyance shall be deemed attended only when the driver or other attendant is physically on or in the vehicle or conveyance, or has the vehicle or conveyance within the driver or attendant's field of vision and can reach the vehicle or conveyance quickly and without any kind of interference; attended also means the driver or attendant is awake, alert, and not engaged in any other duties or activities which may divert his/her attention from the vehicle or conveyance.
- (14) Detonators may not be transported in the same vehicle or conveyance with other explosives unless:
  - (i) The detonators and explosives are placed in separate locked Type 2 magazines secured within the body of the vehicle or conveyance;
  - (ii) The detonators and explosives are placed in a suitable locked container and separated by 4 inches of hardwood and the detonators are totally enclosed or confined by the hardwood construction;
  - (iii) The detonators and explosives are placed in separate locked containers or container compartments constructed in accordance with the Institute of Makers of Explosives Safety Library Publication No. 22, "IME Standard for the Safe Transportation of Detonators in a Vehicle with Other Explosives"; or
  - (iv) The detonators and explosives are placed in separate locked Type 3 magazines.
- (C) Requirements for the transportation of explosives, blasting agents and blasting supplies to blasting areas by non-motorized means shall be:
  - (1) Explosives and blasting agents shall be carried in day boxes, original containers or shall be placed in bags or containers that are water-resistant and constructed of non-sparking and nonconductive material.
  - (2) Detonators shall be wrapped in suitable padding and carried in separate bags or containers from other explosives.

## **ARTICLE 6     USE OF EXPLOSIVE MATERIALS**

### **Section 6-1     General Requirements**

- (A) While explosives are being handled or used, smoking, matches or any other source of fire or flame shall not be within 50 feet of the blast site.
- (B) No person shall handle explosives while under the influence of intoxicating liquors, narcotics, or other dangerous drugs. This rule does not apply to persons taking prescription drugs and/or narcotics as directed by a physician providing such use shall not endanger the worker or others.
- (C) When blasting is done in populated or residential areas or in close proximity to a structure, railway, or highway or any other installation that may be damaged, the following precautions shall be taken:
  - (1) The blast shall be covered, before firing, with a mat or material that is capable of preventing fragments from being thrown;
  - (2) The blast shall be loaded in compliance with the Table of Scaled Distance (Table 6-10) or be monitored by a seismograph; and
  - (3) All persons within the blast area shall be given reasonable notification prior to blasting operations and informed as to the type of warning signal that will be given prior to the blast.
- (D) Blasters conducting blasting operations shall take every reasonable precaution, including but not limited to warning signals, flags and barricades to insure the safety of the general public and workers.
- (E) Surface blasting operations shall be conducted during periods of daylight, when the blast area is clearly visible. Blasting operations conducted after periods of daylight shall be approved by the Division and local law enforcement agency prior to each blast. Approval shall only be granted if such approval serves the safety of the general public.
- (F) The blaster shall perform all required notification to and obtain all required permits from local jurisdictions or authorities, including, but not limited to, the County Sheriff, local fire districts and fire departments before beginning blasting operations.
- (G) Whenever blasting operations are subject to federal, state and local rules, the higher standard shall apply.
- (H) Whenever blasting is being conducted in the vicinity of gas, electric, water, fire alarm, telephone, telegraph, steam utilities or transportation corridors, the blaster shall notify the appropriate transportation or utility representatives at least 24 hours in advance of blasting, specifying the location and intended time of such blasting.
- (I) The blaster shall suspend all blasting operations and remove all persons from the blast site during the approach and progress of an electrical storm.
- (J) No fire shall be fought where the fire is in imminent danger of contact with explosives. All employees shall be removed to a safe area and the fire area guarded against intruders.
- (K) Detonators or other explosives shall never be carried in pockets of clothing.
- (L) Detonators shall not be inserted in explosive materials that do not have a cap well without first

making a hole in the cartridge with a non-sparking punch of proper size, or the appropriate pointed handle of a cap crimper.

- (M) The detonator shall be secured within the primer so that no tension is placed on the leg wires, safety fuse, shock tube, plastic tubing or detonating cord at the point of entry into the detonator.
- (N) The detonator shall be fully inserted into the primer cartridge or booster and shall not protrude from the cartridge.
- (O) Cast primers and boosters shall not be used if the hole is too small for the detonator, and attempting to enlarge the hole in a cast primer or booster shall not be permissible.
- (P) Primers are not to be prepared in a magazine or near large quantities of explosive materials.
- (Q) Explosives and blasting agents shall be kept separated from detonators until the charge is placed.
- (R) Only non-sparking metallic slitters may be used for opening fiberboard cases.
- (S) Cartridges or packages of explosives showing signs of discoloration or deterioration must be carefully set aside and properly disposed of in accordance with manufacturer's recommendations.
- (T) No explosive material shall be abandoned or left in any location for any reason, nor left in such a manner that they may easily be obtained by children or other unauthorized persons. All unused explosives shall be returned to proper storage facilities.
- (U) A record of each blast shall be kept. All records, including seismograph reports, shall be retained at least five years, be available for inspection by the Division, and contain at least the following minimum data, as applicable:
  - (1) Person for whom blasting operations are conducted
  - (2) Name, permit number, and signature of the blaster
  - (3) Exact location or address of the blast, date and time of detonation
  - (4) Type of material blasted
  - (5) Number of holes, burden and spacing
  - (6) Diameter and depth of holes
  - (7) Types of explosives used
  - (8) Amount and type of explosive loaded in each borehole or used in each charge
  - (9) Total amount of each explosive used
  - (10) Maximum amount of explosives and holes detonated within 8 milliseconds
  - (11) Method of firing and type of circuit
  - (12) Direction, distance in feet, and identification of the nearest dwelling, house, public building, school, church, commercial or institutional building neither owned nor leased by the person or company conducting the blasting

- (13) Weather conditions
- (14) Type and height or length of stemming
- (15) A statement as to whether mats or protection against flyrock were used
- (16) Type of delay caps used and delay periods used
- (17) The person taking the seismograph reading shall accurately indicate exact location of the seismograph if used and shall show the distance of the seismograph from the blast
- (18) Seismograph records, where required, which shall include:
  - (i) Name of person and firm analyzing the seismograph record; and
  - (ii) Seismograph reading.
- (19) Sketch of blast pattern including number of holes, burden and spacing distance, delay pattern, and if decking is used, a hole profile.

## **Section 6-2 Drilling and Loading**

- (A) Procedures that permit safe and efficient loading shall be established before the loading of explosive materials is started.
- (B) All boreholes shall be sufficiently large to admit freely the insertion of the cartridges of explosives.
- (C) Tamping shall be done only with wooden rods or with approved plastic tamping poles without exposed metal parts, but non-sparking metal connectors may be used for jointed poles. Violent tamping shall be avoided. The primer shall never be tamped.
- (D) No boreholes shall be loaded except those to be fired in the next round of blasting. After loading, all remaining explosive materials shall be immediately returned to magazines or day boxes.
- (E) No explosives or blasting agents shall be left unattended on a blast site.
- (F) Drilling shall not be started until all remaining butts of old boreholes are examined for unexploded charges, and if any are found, they shall be refired or removed before work proceeds.
- (G) No person shall be allowed to deepen boreholes that have contained explosives or blasting agents.
- (H) Drilling shall not be conducted where there is a danger of intersecting a loaded borehole or misfired explosive material.
- (I) Equipment, machines and all tools not used for loading explosives into boreholes shall be removed from the immediate location of boreholes being loaded with explosives. Equipment shall not be operated within 50 feet of loaded boreholes except when equipment is needed to add cover or mats.
- (J) Loaded boreholes shall not be left unattended.
- (K) The Type I permittee shall maintain an accurate, up-to-date record of explosives, blasting agents and all blasting supplies used in a blast and shall keep an accurate running inventory of all explosives and blasting agents stored on the operation.

- (L) Pneumatic loading of blasting agents into blast holes primed with electric detonators or other static-sensitive initiation systems shall conform to the following requirements:
  - (1) A positive grounding device for the equipment shall be used to prevent the accumulation of static electricity.
  - (2) A semi-conductive hose shall be used.
  - (3) A qualified person shall evaluate all systems to assure that they will adequately dissipate static under potential field conditions.
- (M) Primers shall be made up immediately prior to placing the primer in the borehole.
- (N) Dropping or pushing a primer or any explosive with a lighted fuse attached into a borehole is prohibited.
- (O) Detonators shall not be loaded into a hot hole or exposed to temperatures above 150° F unless specifically designed and approved by the manufacturer for higher temperatures.

### **Section 6-3 Electric Initiation of Blasts**

- (A) Electric detonators may be used for blasting operations in congested districts, or on highways, or adjacent to highways open to traffic, except where sources of extraneous electricity make such use dangerous.
- (B) Electric detonator wires shall be kept short-circuited (shunted) until they are connected into the circuit for firing.
- (C) Signs shall be posted warning against the use of mobile radio transmitters on all adjacent highways and roads.
- (D) Mobile radio transmitters that are less than 100 feet away from electric detonators shall be de-energized and effectively locked when the detonators are not in the original containers.
- (E) Electric detonators shall be used in compliance with the recommendations of IME with regard to blasting in the vicinity of radio transmitters as stipulated in Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Commercial Electric Detonators (Blasting Caps), IME Safety Library Publication No. 20, December 2011.
- (F) Precautions in accordance with the recommendations of IME with regard to blasting in the vicinity of radio transmitters as stipulated in Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Commercial Electric Detonators (Blasting Caps), IME Safety Library Publication No. 20, December 2011 shall be taken to prevent accidental discharge of electric detonators from current induced by radar, cellular telephones, radio transmitters, battery contact, lightning, adjacent power lines, static electricity, dust storms, blowing snow or other sources of extraneous electricity.
- (G) Before adopting any system of electrical firing, the blaster shall conduct a thorough survey for extraneous currents, and all dangerous currents shall be eliminated before any holes are loaded.
- (H) In any single blast using electric detonators, all detonators shall be of the same style or function and be of the same manufacture.
- (I) Electric blasting shall be carried out by using blasting circuits or power circuits, in accordance with the electric detonator manufacturer's recommendations.

- (J) The firing line shall be checked with an approved testing device at the terminals before being connected to the blasting machine or other power source.
- (K) The circuit, including all detonators, shall be tested with an approved testing device before being connected to the firing line.
- (L) When firing a circuit of electric detonators, care shall be exercised to ensure that an adequate quantity of delivered current is available, in accordance with the manufacturer's recommendation.
- (M) Connecting wires and lead wires shall be insulated single solid wires of sufficient current- carrying capacity and shall not be less than #20 gauge (American wire gauge) solid core insulated wire.
- (N) Firing line or leading wires shall be solid single wires of sufficient current carrying capacity, and shall be not less than #14 gauge (American wire gauge) solid core insulated wire. Bus wires depend on the size of the blast, but #14 gauge (American wire gauge) copper is recommended.
- (O) The ends of lead wires which are to be connected to a firing device shall be shorted by twisting them together or otherwise connecting them before they are connected to the leg wires or connecting wires, and they shall be kept in the possession of the person who is doing the loading until loading is completed and the leg wires attached. Lead wires shall not be attached to the firing device until the blaster is ready to fire the shot and must be attached by the blaster.
- (P) The ends of the leg wires on electric detonators shall be shorted in a similar manner and not separated until all holes are loaded and the loader is ready to connect the leg wires to the connecting wires or lead wires.
- (Q) When firing electrically, the insulation on all firing lines shall be adequate and in good condition.
- (R) A power circuit used for firing electric detonators shall not be grounded.
- (S) When firing from a power circuit, the firing switch shall be locked in the open or "off" position at all times, except when firing. It shall be so designed that the firing lines to the cap circuit are automatically short-circuited when the switch is in the 'off' position. Keys to this switch shall be entrusted only to the blaster.
- (T) Blasting machines shall be in good condition and the efficiency of the machine shall be tested periodically to make certain that it can deliver power at its rated capacity.
- (U) When firing with blasting machines, the connections shall be made as recommended by the manufacturer of the electric detonators used.
- (V) The number of electric detonators connected to a blasting machine shall not be in excess of its rated capacity. A series or circuit shall contain no more detonators than the limits recommended by the manufacturer of the electric detonators in use.
- (W) The blaster shall be in charge of the blasting machines, and no other person shall connect the leading wires to the machine.
- (X) Blasters, when testing circuits to charged holes, shall use only blasting testers especially designed for this purpose.
- (Y) In electrical firing, only the person making leading wire connections shall fire the shot. All connections shall be made from the borehole back to the source of firing current, and the lead line wires shall remain shorted and not be connected to the blasting machine or other source of current until the charge is to be fired.

- (Z) After firing an electric blast from a blasting machine, the leading wires shall be immediately disconnected from the machine and short-circuited.
- (AA) When electric detonators have been used, workers shall not return to misfired holes for at least thirty minutes.

#### **Section 6-4 Safety Fuse Initiation of Blasts**

- (A) A safety fuse that is deteriorated or damaged in any way shall not be used.
- (B) The hanging of safety fuse on nails or other projections which will cause a sharp bend to be formed in the fuse is prohibited.
- (C) Before assembling fuse detonators and safety fuse, a short length shall be cut from the end of the supply reel so as to assure a fresh cut end in each fuse detonator.
- (D) Only cap crimpers specifically designed for the purpose of crimping caps shall be used for attaching fuse detonators to safety fuse. Crimpers shall be kept in good repair and accessible for use.
- (E) No fuse detonators and safety fuse shall be assembled, or primers made up, in any magazine or near any possible source of ignition or initiation.
- (F) The assembly of fuse detonators, safety fuse and making of primers shall only be done in a place selected for this purpose and at least 100 feet away from any storage magazine.
- (G) The burning rate of the safety fuse in use at any time shall be measured, posted in conspicuous locations, and brought to the attention of all workers concerned with blasting.
- (H) New rolls of fuse shall be tested for burn rate prior to use and all partial rolls shall be tested at least every 30 days. A record of the burn rate shall be kept by the permittee.
- (I) The length of safety fuse shall be in accordance with the manufacturer's recommendations. In no case shall the length of fuse be less than 3 feet and shall not have a burn time of less than 120 seconds at the time of initiation.
- (J) Lighting of safety fuse shall be done with hot wire lighters, pull-wire lighters, thermalite connectors, or igniter cord and thermalite connectors.
- (K) Matches, cigarette lighters, cigarettes, pipes, cigars or other unsafe means shall not be used to ignite safety fuse.
- (L) Igniters shall be used in accordance with the manufacturer's recommendations and shall not be attached to a safety fuse until the charge is at the blast site and the crew is fully prepared to light the charge.
- (M) At least two persons shall be present when fuse detonator and safety fuse blasting is done by hand-lighting methods.
- (N) When blasting with safety fuses, consideration shall be given to the length and burning rate of the safety fuse and shall be used in accordance with the manufacturer's recommendations. A sufficient time of not less than 120 seconds, with a margin of safety, shall always be provided for the blaster to reach a place of safety.
- (O) No more than 12 safety fuses shall be lit by each blaster when hand lighting devices are used.



However, when two or more safety fuses in a group are lit as one by means of igniter cord or other similar fuse-lighting devices, they may be considered as one fuse.

- (P) Fuse detonators and safety fuse shall not be used for firing mud cap charges unless charges are separated sufficiently to prevent one charge from dislodging other shots in the blast.
- (Q) Only sufficient primers for one day's use shall be made up at a time.
- (R) Any loose cartridges of explosives, detonators, primers and assembled fuse detonators and safety fuse unused at the end of the shift shall be returned to their respective and separate magazines and locked up.
- (S) Safety fuse shall not be used in blasting operations in populated areas, public areas, on highways or adjacent to roads open to traffic.
- (T) When the fuse lighter has been ignited, the blaster shall assume initiation of the safety fuse has occurred.
- (U) If the safety fuse does not show evidence of initiation, the blaster shall not attempt any further initiation and retreat to a safe location for at least one hour.
- (V) When safety fuse is used, workers shall not return to a misfire for at least one hour.
- (W) If explosives are suspected of burning, all persons in the endangered area shall move to a safe location and no one shall return to the area for at least one hour after signs of burning have ceased.

#### **Section 6-5 Non-electric Initiation of Blasts**

- (A) Blasters shall be familiar with and follow the manufacturer's warnings and instructions, especially hook-up and safety precautions.
- (B) Operations shall be discontinued during the approach and progress of electrical storms.
- (C) Non-electric leads shall not be held during firing.
- (D) Primary initiators shall not be attached to the round or shot until after all the connections have been made and the blasting area has been cleared.
- (E) Non-electric delay connectors shall not be exposed to excessive impact, friction, flame, electrical discharge, static electricity or lightning.
- (F) Delay detonators shall not be disassembled from the plastic connector block, nor shall the delay detonators be used without the block.
- (G) Shock tube connections shall be at right angles to detonating cord.
- (H) Connections with other initiation devices shall be secured in a manner that provides for uninterrupted propagation.
- (I) Factory made units shall be used as assembled and shall not be cut except that a single splice is permitted on the lead-in trunkline during dry conditions.
- (J) No tool shall be used to pry on any component containing a detonator, nor shall any tool be used to open, fasten or clean out any connector containing a detonating device.

- (K) Care shall be taken to ensure that a vehicle is not driven over the tubing, connectors or any surface delay component.
- (L) In multiple row blasts, the initiation system shall not be connected from row to row until all drilling and loading has been completed. In single row blasts, the components shall not be connected from hole to hole until all drilling and loading has been completed.
- (M) A safety line consisting of trunkline or other non-electric tubing shall be connected to the last hole in each row and shall extend beyond the area of cover in a covered or matted blast and shall be used to check for complete detonation of each row.
- (N) Before firing the shot, the blaster shall visually inspect and verify that all connections in the initiation system are made in accordance with the manufacturer's recommendations.

#### **Section 6-6 Use of Detonating Cord**

- (A) Care shall be taken to select a detonating cord consistent with the type and physical condition of the borehole and stemming and the type of explosives used.
- (B) Detonating cord shall be handled and used with the same respect and care given other explosives.
- (C) If using a detonating type cord for blasting, the double-trunkline or loop systems shall be used.
- (D) In multiple-row blasts, the trunkline layout shall be designed so that the detonation can reach each blast hole from at least two directions.
- (E) All detonating cord knots shall be tight and all connections shall be kept at right angles to the trunklines.
- (F) The line of detonating cord extending out of a borehole or from a charge shall be cut from the supply spool before loading the remainder of the bore hole or placing additional charges.
- (G) Detonating cord shall be handled and used with care to avoid damaging or severing the cord during and after loading and hooking-up.
- (H) Detonating cord connections shall be made in accordance with the manufacturer's recommended methods. Knot-type or other cord-to-cord connections shall be made only with detonating cord in which the explosive core is dry.
- (I) Detonating cord shall be cut with a sharp knife, razor blade or cutters designed for use with detonating cord. Scissors or plier type cutters shall not be used.
- (J) All detonating cord trunklines and branch lines shall be free of loops, sharp kinks, or angles that direct the cord back toward the oncoming line of detonation.
- (K) All detonating cord connections shall be inspected before firing the blast.
- (L) When detonating cord millisecond-delay connectors or short-interval-delay electric detonators are used with detonating cord, the practice shall conform strictly to the manufacturer's recommendations.
- (M) When connecting a detonator to detonating cord, the detonator shall be taped or otherwise attached securely along the side or the end of the detonating cord, with the end of the detonator containing the explosive charge pointed in the direction in which the detonation is to proceed.

- (N) When initiating detonating cord with fuse detonators and safety fuse, two fuse detonators shall be required.
- (O) Detonators for firing the trunkline shall not be brought to the loading area nor attached to the detonating cord until the area has been cleared for the blast.

#### **Section 6-7 Electronic Initiation of Blasts**

- (A) Permittees shall be trained in the manufacturer's procedures for use of electronic detonators and shall follow the manufacturer's warnings and instructions, especially hook-up and safety precautions.
- (B) Test equipment and blasting machines designed for use with electric detonators shall not be used with electronic detonators.
- (C) Manufacturer's recommended practices shall be followed to protect electronic detonators from electromagnetic, radio frequency or other electrical interference sources.
- (D) Electronic detonators shall only be fired with the equipment and procedures recommended by the manufacturer.
- (E) Electric detonators and electronic detonators shall not be used in the same blast, even when made by the same manufacturer, unless the manufacturer approves such use.
- (F) Test equipment and blasting machines that are designed for electronic detonators shall not be used with electric detonators.
- (G) Electronic detonator wires, connectors, coupling devices, shock tube or other components shall be protected from mechanical abuse and damage.
- (H) Electronic detonators of different types and/or versions shall not be used in the same blast, even if made by the same manufacturer, unless such use is approved by the manufacturer.
- (I) Equipment or electronic detonators that appear to be damaged or poorly maintained shall not be used.
- (J) Only blasting machines, testers, or instruments that are specifically designed for the electronic detonator system shall be used.
- (K) Never mix or use electronic detonators and equipment made by different manufacturers.
- (L) The handling or use of electronic detonators shall be discontinued during the approach and progress of an electrical storm. Personnel must be withdrawn from the blast area and moved to a safe location.
- (M) Electronic detonator systems shall not be exposed to or used in operational temperature and pressure ranges outside those specified by the manufacturer.
- (N) Electronic detonators shall never be tested or programmed in a booster, cartridge or other explosive component (primer assembly) before it has been deployed in the borehole or otherwise loaded for final use.
- (O) An electronic detonator shall not be held while it is being tested or programmed.

## **Section 6-8     Firing the Blast**

- (A) It shall be the duty of the blaster to determine the time of blasting. The blaster shall conduct all blasting operations and no shot shall be fired without the blaster's presence and approval.
- (B) All blasting in congested areas or in close proximity to a structure, railway, highway or any other installation where the blasting may cause injury or damage by flying rock shall be covered with blasting mats or other protective material before firing.
- (C) All persons within the blasting area shall be notified of the time of the blast and moved to a safe distance or under sufficient cover. Guards shall be posted to prevent entry into the blast area.
- (D) All surplus explosive materials shall be removed to a safe location before blasting.
- (E) Flaggers shall be safely posted on highways that pass through the danger zone so as to stop traffic during blasting operations.
- (F) Guards shall be posted around the perimeter of the blasting area to prevent unauthorized entry into the blast area. Either visual or verbal communication must be possible between guards.
- (G) Before the blast is fired, the warning signal shall be given by the blaster in charge or the individual designated by the blaster in charge.
- (H) An inspection of the blast area to determine if all charges have detonated shall be done by the blaster before guards and flaggers are cleared by the blaster to leave their posts.

## **Section 6-9     Misfires**

- (A) The blaster shall provide proper safeguards for excluding all unauthorized persons from the danger zone if a misfire is found.
- (B) No other work shall be performed except what is necessary to remove the hazard of the misfire and only those employees necessary to perform the work shall remain in the danger zone.
- (C) Explosives shall not be extracted from a hole that has misfired unless it is impossible or hazardous to detonate any unexploded explosive materials by insertion of an additional primer.
- (D) If there are any misfires while using fuse detonators and safety fuse, all employees shall remain away from the charge for at least one hour. Misfires shall be handled under the direction of the person in charge of the blasting. All fuses shall be carefully traced and a search made for the unexploded charges.
- (E) When electric detonators have been used, workers shall not return to the blast area for at least 30 minutes unless the manufacturer recommends additional time before returning to the blast area. All wires shall be carefully traced and a search made for unexploded charges.
- (F) When a completely non-electric initiation system, other than safety fuse, has been used, all employees shall remain away from the blast area for at least 15 minutes. All shock tubes shall be traced and a search made for unexploded charges.
- (G) When electronic detonators have been used, workers shall not return to the blast area for at least 30 minutes unless the manufacturer recommends additional time before returning to the blast area.
- (H) If explosives are suspected of burning in a hole, all persons in the endangered area shall move to

a safe location and no one shall return to the hole for at least one hour after evidence of combustion ceases.

- (I) No drilling, digging or picking shall be permitted until all missed holes have been detonated or the blaster in charge has approved that work can proceed.
- (J) Explosive materials recovered from misfires shall not be reused and shall be disposed of in the manner recommended by the manufacturer.

## **Section 6-10 Blasting Vibration and Air Over-Pressure Standards**

- (A) In all blasting operations, blasters shall use one of the following methods to monitor or control the intensity of motion in the ground at the nearest dwelling, house, school, church, commercial or occupied building. These limits do not apply to property owned, leased or contracted by the blaster's company or property on which the owner provides a voluntary written waiver from these restrictions.
  - (1) Option 1 - Frequency Versus Particle Velocity graph. A blasting operation shall have the option to use the graph shown in Figure 6-10 to limit peak particle velocity based upon the frequency of the blast vibration. Allowable vibrations fall below the limits indicated by the central lines; non-allowable vibrations lie above the lines. Seismographs shall meet the following requirements:
    - (i) Monitoring instruments shall have a flat frequency response between 2 and 250Hz for particle velocity.
    - (ii) The digitizing sampling rate for peak particle measurements shall be at least 1,024 samples per second.
    - (iii) Seismographs shall be capable of performing a self-test of velocity transducers and printed event records shall indicate whether or not the sensor test was successful.
    - (iv) Monitoring instruments shall be capable of recording particle velocities with intensities ranging from 0.02 to 5.0 inches per second.
    - (v) Monitoring systems shall be calibrated by a service center approved by the manufacturer within at least two years of the time of use. Certificates documenting date of calibration, issued by the approved service center, shall be kept by the user.
    - (vi) Monitoring systems shall be capable of printing hard-copy reports showing the date and time of monitoring, the maximum peak particle velocity (PPV) measurements, and plotted PPV-time waveform plots.
    - (vii) For all blasts with a scaled distance less than 100 ft/lb<sup>0.5</sup>, seismographs monitoring motion shall be set to trigger at a level of 0.05 in/s.

The following equation shall be applied when calculating the scaled distance.

$$D_s = \frac{D}{\sqrt{W}}$$

Where:  $D_s$  = Scaled distance (ft/lb<sup>0.5</sup>)

D = Distance to the nearest structure (ft)

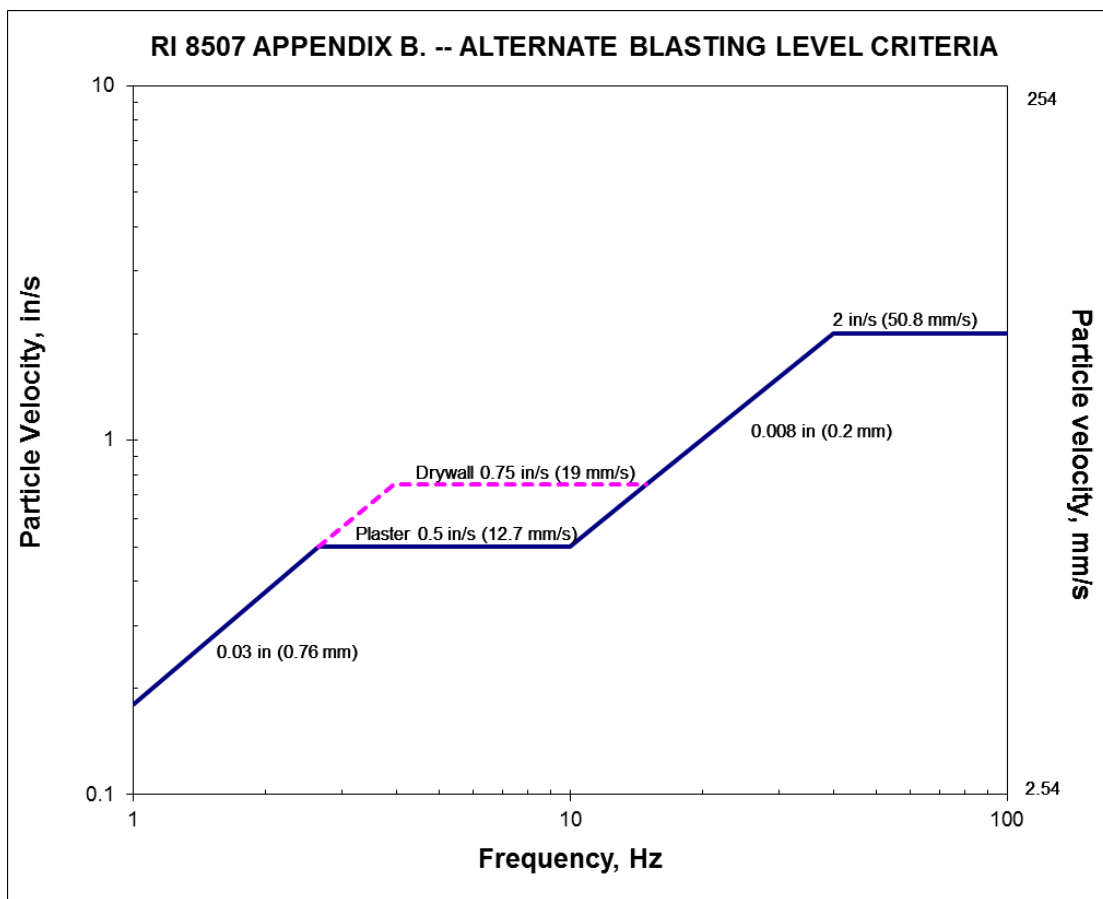
W = Maximum weight of explosive detonated within any 8 millisecond window (lb)

(viii) Vibration analysis results must be presented in comparison with the RI 8507, adopted by United States Bureau of Mines (USBM) and as shown in Figure 6-10.

(ix) If a valid vibration record showing compliance with the MAPV limits shown in figure 6-10 is not available for inspection, the maximum charge weight per delay (W) must conform to the scaled distance limitations as prescribed in Option 2.

**FIGURE 6-10**

**Option 1: Particle Velocity Versus Frequency**



**Table: U.S. Bureau of Mines RI 8507, 2009**

- (2) Option 2 Scaled Distance – when seismic monitoring is not performed, the maximum weight of the explosive detonating within any 8-millisecond time period shall not exceed the amount allowed by a calculation using the scaled distance factors given in Scaled Distance column of Table 6-10.

The following equation shall be applied when utilizing the scaled distance calculations to

control blast-induced vibration.

$$W = \left( \frac{D}{D_s} \right)^2$$

Where:             $D_s$  = Scaled distance (ft/lb<sup>0.5</sup>)  
                        $D$  = Distance to the nearest structure (ft)  
                        $W$  = Weight of explosive detonated within any 8 millisecond window (lb)

**Example Maximum Charge Weight per Delay (W) Calculation:**

Given:             $D_s$  = 55 (ft/lb<sup>0.5</sup>)  
                        $D$  = 500 ft.  
                       *therefore*  
                        $W = (500 / 55)^2 = 82.6$  lb

Table 6-10	Blasting Vibration and Air Over-Pressure	
Distance From Blast (Ft)	Scaled Distance Factor Units Are Ft/Lb <sup>0.5</sup>	
0 to 300	50	
301 to 5000		
5001 and Greater	65	

- (B) Air over-pressure (air blast) limitation: Air over-pressure at the nearest dwelling house, school, church, or otherwise occupied buildings shall not exceed 133 dB (0.0129 psi). Measuring air over-pressure is not required for all blasting operations. However, due to complaints or other circumstances, the Division may require blasters to monitor air over-pressure. All instruments used to measure air over-pressure compliance shall:
- (1) Employ linear microphones with a flat frequency response between 2 and 200 Hz
  - (2) Have a digital sampling rate of at least 1024 samples per second; and
  - (3) Be capable of measuring air over-pressure from 120 to 140 dB-Linear (0.0029 to 0.029 psi).

## **ARTICLE 7     AVALANCHE MITIGATION**

### **Section 7-1     General Requirements**

- (A) The use of explosives and blasting agents for avalanche mitigation shall comply with this article unless explosives are used in compliance with Article 6.
- (B) The requirements of this article shall only be applicable to the use of explosives for avalanche mitigation. The use of explosives for other purposes, such as demolition, site clearing or construction shall be in compliance with Article 6.
- (C) Explosives and blasting agents shall not be stored, kept, assembled, combined to form armed charges, or had in any inhabited areas, structures or buildings except in compliance with this Article or Article 4.
- (D) Only blasters shall supervise the assembly, arming of explosive components, and detonation of explosive charges.
- (E) Each avalanche mitigation blasting crew or team shall consist of a blaster and at least one assistant trained as applicable per Section 7-2. The crew may consist of two blasters, but only one shall act as the blaster in charge.
- (F) Untrained personnel may accompany the blasting crew for training purposes but shall only participate in actual firing of charges for completion of training in accordance with Section 7-2(B)(1)(iii)(a)(3).
- (G) The blaster in charge of each crew or team shall be responsible for all decisions made regarding preparation and placement of charges.
- (H) Blasting operations shall be conducted during periods of daylight with personnel guarding the area, or when the area has been closed. Nighttime blasting operations shall be approved by the Division, and approval shall only be granted if such approval serves the safety of the general public.
- (I) The blaster in charge shall pre-plan the escape route and all crew members shall understand the plan before initiating the charge.
- (J) No person shall accept or be given a job assignment that is beyond the individual's ability, training, or qualifications.
- (K) Cold temperatures, high winds, and heavy snowfall are conditions that should be anticipated in avalanche mitigation blasting. These conditions shall be considered in determining a person's physical ability, training, and qualifications for conducting safe blasting operations and in the management of safe blasting operations.
- (L) Operations utilizing hanging or dangling charges must have a hang cord entanglement safety procedure.

### **Section 7-2     Training Requirements**

- (A) Type II Avalanche Mitigation permit applicants shall submit a training program for personnel involved in the use, storage and transportation of explosives to the Division. The Division shall approve the training program prior to issuance of the permit.
- (B) The training program shall include at least the following for each personnel type:



(1) Blaster in Training:

(i) A minimum of 8 hours of classroom education and a written examination to include the following:

- (a) Explosives Regulations of the Division
- (b) Explosives Regulations of the Division and federal requirements for the storage of explosives and magazine locations, inventory procedures, and magazine access
- (c) Safety procedures for explosives and blasting agents used within the company, including the properties and classification of each type of explosive, and consequences of the unsafe use of explosives
- (d) Explosives Regulations of the Division for preparing, handling, and using hand charges to include:
  - (1) Hand charge assembly procedures for both field arming and make-up room arming;
  - (2) Crimping procedures;
  - (3) Transportation to blast site by skiing or aerial tramways for both field armed charges and make-up room armed charges;
  - (4) Use of igniters and determining successful initiation of fuse;
  - (5) Misfire procedures;
  - (6) Procedures for clearing and guarding the blasting area; and
  - (7) Deployment of initiated hand charges.
- (e) Hazard training for cornice control operations
- (f) Hang cord entanglement safety procedures
- (g) Hazard training for avalauncher operations
- (h) Record keeping procedures, including:
  - (1) Records of transactions;
  - (2) Explosive inventory record keeping;
  - (3) Explosive use and route log record keeping; and
  - (4) Misfire documentation.

(ii) Simulated Field Training for Hand Charges

- (a) During weather conditions typical to avalanche mitigation and under the supervision of a blaster, the trainee shall:
  - (1) Attend demonstration with simulated components;

- (2) Attach igniters to fuse without a detonator and successfully ignite fuse not less than 5 times;
- (3) Attach igniters to fuse without a detonator and twice simulate an unsuccessful attempt to light the fuse and follow the procedures for a misfire;
- (4) Attach igniters to fuse with a detonator and successfully ignite and deploy the detonator and fuse assembly not less than 5 times; and
- (5) When training occurs at operations not utilizing a pre-manufactured detonator and safety fuse assembly, assemble detonator and fuse, attach igniters to fuse with detonator and successfully initiate and deploy the detonator and fuse assembly not less than 5 times.

(iii) Field Experience Training for Hand Charges

- (a) Under the supervision of a blaster, the trainee shall:
  - (1) Accompany a blasting crew on 5 routes or the deployment of not less than 20 charges as an observer;
  - (2) Accompany a blaster, as an assistant only, for the initiation and deployment of not less than 20 charges; and
  - (3) Accompany a blaster and initiate and deploy not less than 20 charges under the direct supervision of the blaster.

(iv) Avalauncher Operator

- (a) Trainee shall complete 8 hours classroom and field training before becoming an avalauncher operator. This training shall include:
  - (1) Operating instructions for each type of avalauncher used;
  - (2) Procedures on performing preventive maintenance inspections;
  - (3) Procedures on assembly of charges;
  - (4) Procedures for checking the elevation, aiming, and pressure settings of the avalauncher;
  - (5) Procedures for test firing the avalauncher;
  - (6) Procedures for loading charges in the avalauncher;
  - (7) Procedures for clearing and guarding the target area;
  - (8) Emergency procedures; and
  - (9) Requirements for securing the equipment.
- (b) Qualifications for avalauncher operator shall be:
  - (1) One year experience as a blaster in charge;

- (2) Must have assisted on the avalauncher crew not less than five times; and
  - (3) Must load and fire the avalauncher under the supervision of a qualified operator not less than 10 times.
- (2) Howitzer Operator
  - (i) All Howitzer operations shall be conducted in accordance with the provisions of The Avalanche Artillery Users of North America Committee (AAUNAC) Standard (Revised May 16, 2012).
- (3) Requirements for Annual Refresher Training
  - (i) All blasters shall attend a minimum of 4 hours of refresher training at the beginning of each season.
    - (a) Classroom training shall include:
      - (1) Review of operation techniques such as throwing techniques, air blasting, dangling charges, hang cord entanglement safety procedures, cornice blasting, avalauncher and howitzer procedures;
      - (2) Review of assembly and transportation procedures; and
      - (3) Review of snow safety program.
    - (b) Field training shall include:
      - (1) Review of initiation techniques;
      - (2) Review of misfire procedures; and
      - (3) A walk through of storage and make-up facilities.
  - (ii) Annual refresher training may count towards the 16-hour requirement of Section 3.6(N) of these rules when the refresher training program is specifically approved by the Division.

### **Section 7-3    Make-up Room Requirements**

- (A) Location of Make-up Rooms
  - (1) Make-up rooms shall not be located in buildings or structures that are at any time open to the public.
- (B) Construction of Make-up Rooms
  - (1) The interior of the make-up room shall be finished and equipped to the following minimum standards:
    - (i) Walls shall be constructed of, or covered with, a non-sparking material. Nails or screws shall be countersunk, blind nailed or covered;
    - (ii) Floors shall be constructed of, or covered with, a non-sparking material;
    - (iii) The building and make-up room shall be well ventilated, and the ventilation system shall

discharge to the outside from the make-up room;

(iv) The make-up table shall be constructed of non-sparking, nonconductive material; and

(v) The make-up table shall be located away from the area where explosives are kept before and after assembly.

(2) The building in which the make-up room is located shall be theft-resistant and secured by at least one steel padlock having at least 5 tumblers and a case hardened shackle at least 3/8-inch in diameter. The door shall have hinges and hasps attached so that they cannot be removed from the outside when in the closed position with the lock in place.

(C) Make-up Room Restrictions

(1) Heating units shall be explosion proof, dust-proof and not depend on a combustion process when properly designed and located. National Electric Code-rated explosion-proof and dust-proof heating units may be located inside make-up rooms.

(2) Temperature control devices must be sufficiently designed to prevent overheating of make-up rooms where explosives are stored.

(3) Lighting fixtures shall be National Electric Code explosion-proof rated fixtures and all wiring shall be in sealed conduit.

(4) Electric control switches shall be located outside the make-up room.

(5) Electrical outlet boxes are not permissible inside the make-up room.

(6) Smoking, matches, open flames or flame or spark producing devices shall not be permitted inside the make-up room.

(7) Flammable liquids or flammable compressed gases shall not be stored or had in the make-up room.

(8) Occupancy of the make-up room shall be restricted to authorized and trained personnel when explosives are present.

(9) A make-up room shall not be used for the unattended storage of armed charges.

(10) Explosives stored inside the make-up room must be stored in at least a Type 2 storage magazine suitable for indoor storage.

(D) Make-up Room Housekeeping

(1) The make-up room shall be kept clean and orderly.

(2) Metal tools shall not be used or stored in the make-up room.

(3) Brooms used in the make-up room shall be made of non-sparking materials.

(4) Sweepings and empty explosive material containers shall be disposed of as recommended by the manufacturer.

(5) The make-up room shall be cleaned and all explosives materials shall be removed before any repairs are made to the make-up room.

- (6) The make-up table or bench shall be cleaned regularly and shall be kept free of any materials or tools not used in the assembly of the charges.

#### **Section 7-4 Use of Explosives**

##### **(A) General Requirements**

- (1) While explosives are being handled or used, smoking, matches, or any other source of fire or flame shall not be within 50 feet of the blast site.
- (2) No person shall handle explosives while under the influence of intoxicating liquors, narcotics or other controlled substances. This rule does not apply to persons taking prescription drugs and/or narcotics as directed by a physician, providing such use shall not influence the blaster's ability to conduct safe blasting operations.
- (3) Blasters conducting blasting operations shall take every reasonable precaution, including but not limited to warning signals, flags and barricades to insure the safety of the general public and workers.
- (4) The blaster shall suspend all blasting operations and remove all persons from the blast site during the approach and progress of an electrical storm.
- (5) No fire shall be fought where the fire is in imminent danger of contact with explosives. All employees shall be removed to a safe area and the fire area guarded against intruders.

##### **(B) Explosives**

- (1) Explosives shall have a shelf life of at least 1 operating season in the storage facilities in which they will be stored.
- (2) Blasting caps must be at least a No. 6 cap and no larger than a No. 8 cap except when recommended by the explosives manufacturer for a particular explosive used within a specific application.
- (3) Detonator and safety fuse assemblies manufactured with thermalite connectors shall not be used for avalanche mitigation operations.
- (4) Detonating cord used for initiating primers must be at least a 25-grain cord.
- (5) Explosive materials chosen must have excellent water resistance and be capable of detonation in cold temperatures.
- (6) Explosive materials that are damaged, show signs of deterioration, or have misfired shall not be used.
- (7) Detonators and other explosive materials, with the exception of fuse igniters, shall never be carried in pockets of clothing.
- (8) Should cartridges or packages of explosive materials show signs of discoloration or deterioration, such explosive materials must be carefully set aside and properly disposed of according to the manufacturer's recommendations.
- (9) Only non-sparking metallic slitters may be used for opening fiberboard cases.
- (10) No explosive material shall be abandoned or left in any location for any reason, nor left in such a manner that they may easily be obtained by children or other unauthorized persons.

All unused explosives shall be returned to the proper storage facilities.

- (11) A record of each blast shall be completed and signed by the Type I permittee acting as the blaster in charge. All records shall be retained at least five years, shall be available for inspection by the Division, and shall contain at least the following data:

- (i) Name of company or contractor;
- (ii) Date, time and location of route;
- (iii) Name, permit number and signature of blaster-in-charge of the route;
- (iv) Number of charges used on each route;
- (v) Names of employees on each route;
- (vi) Types of explosives used;
- (vii) Total amount of each explosive received and used;
- (viii) Method of initiation;
- (ix) Type of blasting (hand charge, cornice control, avalauncher);
- (x) Weather conditions; and
- (xi) Statement noting any misfires, the location of misfires, steps taken to recover or refire any misfires, and the date the misfire was found and disposed of.

(C) Hand Charges

(1) Safety Fuse

- (i) Safety fuse that is deteriorated or damaged in any way shall not be used.
- (ii) The hanging of safety fuse on nails or other projections which will cause a sharp bend to be formed in the fuse is prohibited.
- (iii) Pre-manufactured detonator and fuse assemblies shall be used in accordance with the manufacturer's requirements.
- (iv) Before assembling fuse detonators and safety fuse, a minimum of 1 inch shall be cut from the end of the supply reel so as to assure a fresh cut end in each fuse detonator.
- (v) The burning rate of the safety fuse in use at any time shall be measured, posted in conspicuous locations, and brought to the attention of all workers concerned with blasting.
- (vi) New rolls of safety fuse shall be tested for burn rate prior to use and all partial rolls shall be tested at least every 30 days. A record of the burn rate shall be kept by the Type II permittee.
- (vii) Only a bench or hand-held cap crimpers designed for the purpose of crimping fuse detonators shall be used for attaching fuse detonators to safety fuse. Crimpers shall be kept in good repair and accessible for use.

- (viii) No fuse detonators and fuse shall be assembled, or primers made up, in any magazine or near any possible source of initiation.
- (ix) Assembly of fuse detonators and safety fuse and pre-arming of charges shall only be done in a warm, dry, well-lit make-up room.
- (x) Any loose cartridges of explosives, detonators, and assembled fuse detonators and safety fuse unused at the end of the shift shall be returned to their respective and separate magazines and locked up.
- (xi) Detonators, fuse detonator and fuse assemblies, armed charges or safety fuse igniters shall not be carried into nor stored in any magazine containing cartridge high explosives.
- (xii) Detonators shall not be inserted in the explosives without first making a hole in the cartridge of proper size using a tool designed for that purpose.

## (2) Arming of Charges With Detonators

- (i) Cast primers and boosters shall not be used if the hole is too small for the detonator, and attempting to enlarge the hole in a cast primer or booster shall not be permissible.
- (ii) The detonator shall be secured within the primer so that no tension is placed on the safety fuse at the point of entry into the detonator.
- (iii) The detonator shall be fully inserted into the primer cartridge or booster and shall not protrude from the cartridge.
- (iv) After the fuse detonator and safety fuse assembly is inserted, the explosive contains a sensitive detonator and is then vulnerable to premature detonation, therefore delaying the arming of a charge until just before tossing the charge should be standard procedure when wind and/or temperatures are not severe.
- (v) When arming the charge at the blast site the blaster shall:
  - (a) Insure that the fuse detonator is installed on the correct length of fuse prior to transporting to blast sites;
  - (b) Place detonators in adequate protective padding or shields before placing in approved avalanche mitigation packs;
  - (c) Place detonators and explosives in separate approved avalanche mitigation packs while transporting to the blast site;
  - (d) Safety fuse igniters shall not be placed inside the pack when it contains explosives or detonators, but shall be carried in a separate pack;
  - (e) Insure that the detonator is secured to the charge before attaching fuse igniter.
- (vi) Depending on weather condition, the charges may be armed in a make-up room as follows:
  - (a) All fuse detonators shall be installed on the required length of safety fuse before the explosive cartridges or primers are brought to the make-up area;
  - (b) Fuse detonator and safety fuse assemblies shall be secured correctly to each type of explosive charge being used;

- (c) Fuse detonator and safety fuse assemblies shall not be attached to explosive charges until just before the time of distribution to patrol personnel;
- (d) Each hand charge shall be placed in an area separate from the assembly area immediately after assembly is completed; and
- (e) Distribution of hand charges into approved mitigation packs shall take place away from the assembly area.

(3) Initiation of Hand Charges

- (i) The length of safety fuse shall be in accordance with manufacturer's recommendations, and shall be 3 feet in length or have a burn time of not less 120 seconds at the time of initiation.
- (ii) The lighting of fuse shall be done with hot-wire lighters or pull-wire lighters.
- (iii) Matches, cigarette lighters, cigarettes, pipes, cigars or other unsafe means shall not be used to ignite fuse.
- (iv) Igniters shall be used in accordance with manufacturer's recommendations and shall not be attached to a safety fuse until the charge is at the blast site and the crew is fully prepared to initiate the charge.
- (v) At least two persons shall be present when fuse detonators and safety fuse blasting is done by hand lighting methods.
- (vi) When blasting with safety fuses, consideration shall be given to the length and burning rate of the safety fuse, and safety fuse shall be used in accordance with manufacturer's recommendations. A sufficient time of not less than 120 seconds, with a margin of safety, shall always be provided for the blaster to reach a place of safety.
- (vii) When the fuse lighter has been placed on the fuse, the blaster shall assume initiation of the safety fuse has occurred.
- (viii) If the safety fuse does not show evidence of initiation after the fuse lighter has been ignited, the blaster shall not attempt any further initiation of the charge but adequately mark the charge and retreat with the blasting crew to a safe distance for not less than 1 hour.
- (ix) After waiting at least 1 hour, the blaster shall:
  - (a) Determine that initiation failed and ignite the uninitiated charge; or
  - (b) Determine that the initiation was successful and dispose of the misfired explosive charge with a secondary charge.

(4) Use of Detonating Cord

- (i) Detonating cord shall be handled and used with the same respect and care given other explosives.
- (ii) All detonating cord knots shall be tight and all connections shall be kept at right angles.
- (iii) Detonating cord shall be handled and used with care to avoid damaging or severing the cord.



- (iv) Detonating cord connections shall be made in accordance with approved and recommended methods. Knot-type or other cord-to-cord connections shall be made only with detonating cord in which the explosive core is dry.
- (v) Detonating cord shall be cut with a sharp knife, razor blade, or cutters designed for use with detonating cord. Scissors or plier type cutters shall not be used.
- (vi) All detonating cord connections shall be inspected before firing the blast.
- (vii) When connecting a detonator to detonating cord, the detonator shall be taped or otherwise attached securely along the side of the end of the detonating cord with the end of the detonator containing the explosive charge pointed in the direction in which the detonation is to proceed.
- (viii) Two fuse detonators shall be required for the initiation of detonating cord with fuse detonator and safety fuse.
- (ix) Detonators shall not be attached to the detonating cord until the area has been cleared for the blast.

(5) Avalanche Mitigation Packs

- (i) Mitigation packs shall be constructed of material that is water-resistant, non-sparking and non-conductive.
- (ii) Mitigation packs shall have sufficient individual compartments to separate hand charges or explosive components from tools or other equipment or supplies that may be carried in the pack.
- (iii) Tools or other equipment shall not be placed in compartments containing explosives.
- (iv) Each compartment used for hand charges or explosive components shall have an independent means of closure.
- (v) Mitigation packs shall be inspected daily for holes, faulty compartments or closures and explosive residue. Packs shall not be used until adequately repaired or cleaned.
- (vi) Mitigation packs shall not be left unattended, or used for storing explosives. All explosive material shall be returned to the approved storage facility at the end of individual mitigation routes.
- (vii) Individual mitigation team members shall not carry more than 35 pounds of explosives material in avalanche mitigation packs.

(D) Avalauncher and Launcher

- (1) All personnel assigned to work on an avalauncher or launcher crew shall be trained in the following:
  - (i) All operating instructions;
  - (ii) Safety precautions;
  - (iii) Emergency procedures; and
  - (iv) Securing requirements for equipment.

- (2) All equipment shall be in good working condition and maintained as recommended by the manufacturer.
- (3) The components of projectile assemblies shall not be interchanged and shall be assembled and used in accordance with the manufacturer's instructions.
- (4) All projectiles shall be inspected before transporting them to the firing location. Such inspection shall include:
  - (i) Cast explosives for cracks, dents, fractures and smooth nose surface;
  - (ii) Cap wells should be clear of obstructions and debris and centered and straight for proper alignment of the cap; and
  - (iii) Fin assembly should be inspected for properly-functioning components and safety items, including pressures plate, pressure plate arming wire, bore rider pin, safety pin, magnet and firing pin.
- (5) Defective projectiles shall not be used and shall be disposed of or returned to the manufacturer.
- (6) Safety devices or components shall not be removed.
- (7) If explosives are not at least 20 feet from the avalauncher/launcher during firing procedures, they shall be kept in a closed Type 3 magazine.
- (8) The transport safety pin shall not be removed until just prior to inserting the projectile into the barrel.
- (9) Avalaunchers/Launchers must be fired with compressed nitrogen gas only.
- (10) Avalaunchers/Launchers shall be connected to the compressed nitrogen source through a satisfactory pressure regulator.
- (11) The pressure regulator shall be set to limit the launch pressure to the maximum recommended by the manufacturer.
- (12) The first round fired in a mitigation mission shall be a test fire to test the proper functioning of the launcher without a projectile.
- (13) The blaster in charge, trained assistants, and blasters in training shall be the only personnel within 100 feet of the avalauncher/launcher during loading and firing.

(E) Misfires

- (1) An explosive charge or any part of an explosive charge that fails to detonate after initiation shall be considered a misfire.
- (2) If a misfire occurs, the blaster shall note the location of the misfired explosive and shall not approach the misfired explosive for at least 1 hour.
- (3) Explosives which are aflame or emitting smoke shall not be approached for at least 1 hour after evidence of combustion ceases.
- (4) The area shall remain guarded or closed until a search of the area has been done and the misfire hazard is removed or the blaster-in-charge pronounces the area safe.

- (5) Misfires shall be handled by the blaster-in-charge and only those employees necessary to remove the hazard and the area shall remain guarded.
- (6) Impact to explosive materials shall be avoided when searching for nonvisible misfired charges.
- (7) A misfired armed charge shall be disposed of where it is found with a secondary charge.

## **Section 7-5     Transportation**

- (A) Transportation of explosives, blasting agents, and blasting supplies on public highways, railways, and airways shall be in accordance with the provisions of title 42 Article 20 C.R.S., any regulations promulgated pursuant thereto and Title 49 CFR Parts 171-179 and Parts 390-397, Motor Carriers.
- (B) Requirements for the transportation of explosives, blasting agents and blasting supplies by motorized vehicles on job sites shall be:
  - (1) No person shall smoke, carry matches or any other flame-producing device or carry firearms or loaded cartridges while in or near a motor vehicle transporting explosives.
  - (2) No person shall drive, load or unload a vehicle transporting explosives in a careless or reckless manner.
  - (3) Vehicles transporting explosives, blasting agents or blasting supplies shall not be taken inside a garage or shop for repairs or servicing.
  - (4) Vehicles used for transporting explosives shall be equipped to carry the load without difficulty and shall be in good mechanical condition.
  - (5) A motor vehicle used for transporting explosive materials shall be inspected prior to loading to determine that it is in proper condition for the safe transportation of explosive materials.
  - (6) All cargo areas of vehicles used for transporting explosive materials shall have tight floors and any exposed spark-producing metal on the inside of the cargo area shall be covered with wood or other non-sparking materials to prevent contact with packages of explosive materials.
  - (7) Packages of explosive materials shall not be loaded above the sides of an open-body vehicle.
  - (8) Explosive materials shall not be transported with other materials or cargoes in the same compartment. In no case shall flammable materials be carried on the same vehicle as explosive materials.
  - (9) A motorized vehicle which contains explosive materials shall not be parked under any of the following circumstances:
    - (i) On or within 5 feet of the traveled portion of a public street or highway;
    - (ii) On private property; or
    - (iii) Within 300 feet of a bridge, tunnel, building, or place where people work, assemble, or congregate.
  - (10) A motorized vehicle transporting explosive materials shall not be left unattended.

- (11) A motorized vehicle shall be deemed attended only when the driver or other attendant is physically on or in the vehicle or conveyance or has the vehicle within the driver's or attendant's field of vision and can reach the vehicle or conveyance quickly and without any kind of interference; attended also means the driver or attendant is awake, alert and not engaged in any other duties or activities which may divert his/her attention from the vehicle.
- (12) Detonators may not be transported in the same vehicle with other explosives unless:
  - (i) The detonators and explosives are placed in separate locked Type 2 magazines secured within the body of the vehicle or conveyance;
  - (ii) The detonators and explosives are placed in suitable locked containers and separated by 4 inches of hardwood, and the detonators are totally enclosed or confined by the hardwood construction; or
  - (iii) The detonators and explosives are placed in separate locked containers or container compartments constructed in accordance with the IME Safety Library Publication No. 22, "IME Standard for the Safe Transportation of Detonators in a Vehicle with Other Explosives"; or
  - (iv) The detonators and explosives are placed in separate locked Type 3 magazines.
- (C) Requirements for the transportation of explosives on passenger tramways when the public is present shall be:
  - (1) Explosives shall not be transported in the same enclosed passenger tramway carrier with the public.
  - (2) Transportation of explosives on non-enclosed passenger tramways shall require the following:
    - (i) Explosives shall be attended at all times;
    - (ii) Warning signs indicating that explosives are currently being transported on the tramway and passengers may ride the tramway at their own discretion shall be clearly posted at the tramway entrance;
    - (iii) Passengers shall not be allowed to ride the passenger tramway in the opposing direction of the explosives;
    - (iv) A minimum distance of 200 feet shall be maintained in front of and behind the chair transporting explosives and chairs transporting the public;
    - (v) The amount of explosives being transported shall not exceed 50 pounds per carrier; and
    - (vi) Nothing in Section 7-5(C)(2) is intended to limit liabilities as set forth in the Colorado Ski Safety Act (C.R.S. 33-44-101 thru 114).

## **ARTICLE 8      GEOPHYSICAL RESEARCH**

### **Section 8-1      General Requirements**

- (A) Seismic Blasting shall conform to the requirements of Articles 4, 5 and 6 of these regulations for the storage and transportation of all explosive materials, for the preparation of charges, for the loading of charges and for the detonation of charges.
- (B) Surface charges, above-surface charges, and armed charges loaded in seismic drill holes less

than 20 feet in depth shall not be left unattended.

- (C) Charges which have not been armed may be left unattended in holes less than 20 feet deep provided that:
  - (1) The hole has been loaded such that the charge has been anchored, cannot be removed and is capped with a hole plug;
  - (2) The charge does not exceed an amount that would cause damage to persons or property on the surface if accidentally detonated; and
  - (3) The backfill material in the loaded hole is a continuous column from the charge to the collar of the drill hole. Any drill holes in which the backfill material has bridged and the hole has not been fully backfilled shall not be left unattended.
- (D) Armed or unarmed charges loaded in seismic drill holes greater than 20 feet deep may be left unattended provided that:
  - (1) The hole has been loaded such that the charge has been anchored, cannot be removed and legwires have been made inaccessible and capped with a hole plug;
  - (2) The charge does not exceed an amount that would cause damage to persons or property on the surface if accidentally detonated; and
  - (3) The backfill material in the loaded hole is a continuous column from the charge to the collar of the drill hole. Any drill holes in which the backfill material has bridged and the hole has not been fully backfilled shall not be left unattended.
- (E) Armed and unarmed charges that are loaded in inhabited areas shall not be left unattended.
- (F) Blasting signs shall be posted on roads and trails leading to the blast site.

## **ARTICLE 9     BLACK POWDER EXPLOSIVES**

### **Section 9-1     General Requirements**

- (A)     Black powder shall be stored in shipping containers as required by regulations of the U.S. Department of Transportation, 49 CFR, Section 173.60, as currently published.
- (B)     Black powder intended for personal use shall be sold and stored according to the Uniform Fire Code (sections 77.202, 77.203, and 77.203a).

## **ARTICLE 10    ALTERNATE METHODS AND EMERGENCY VARIANCES**

### **Section 10-1    Alternate Methods or Procedures**

- (A)    The permittee, on specific approval by the Division as provided by this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in these regulations.
- (B)    The Division may approve an alternate method or procedure, subject to stated conditions, when found that:
  - (1) Good cause is shown for the use of the alternate method or procedure;
  - (2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and is substantially equivalent to that specifically prescribed method or procedure; and
  - (3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Division or hinder the effective administration of these regulations.
- (C)    Where the permittee desires to employ an alternate method or procedure, the permittee shall submit a written application to the Division. The application shall specifically describe the proposed alternate method or procedure and shall set forth the reasons for it.
- (D)    Alternate methods or procedures may not be employed until the application is approved by the Division.
- (E)    The permittee shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application.
- (F)    Authorization of any alternate method or procedure may be withdrawn whenever, in the judgment of the Division, the effective administration of this article is hindered by the continuation of the authorization.
- (G)    As used in this paragraph, alternate methods or procedures include alternate construction or equipment.

### **Section 10-2    Emergency Variances from Requirements**

- (A)    The Division may approve construction, equipment, and methods of operation other than as specified in this part, where it is found that an emergency exists and the proposed variations from the specified requirements are necessary and the proposed variations:
  - (1) Will afford security and protection that are substantially equivalent to those prescribed in these regulations;
  - (2) Will not hinder the effective administration of these regulations; and
  - (3) Will not be contrary to any provisions of law.
- (B)    Variations from requirements granted under this paragraph are conditioned on compliance with the procedures, conditions and limitations set forth in the approval of the application.

- (C) Failure to comply in good faith with the procedures, conditions and limitations shall automatically terminate the authority for the variations and the permittee shall fully comply with the prescribed requirements of regulations from which the variations were authorized.
- (D) Authority for any variation may be withdrawn when, in the judgment of the Division, the effective administration of these regulations is hindered by the continuation of the variation.
- (E) Where the permittee desires to employ an emergency variation, the permittee shall submit a written application to the Division.
- (F) The application shall describe the proposed variation and set forth the reasons for it. Variations may not be employed until the application is approved, except when the emergency requires immediate action to correct a situation that is threatening to life or property. Corrective action may then be taken concurrent with the filing of the application and notification of the Division via telephone.

### **Section 10-3 Retention of Approved Variations**

- (A) The permittee shall retain, as part of his records available for examination by the Division, any application approved by the Division under this section.



## **ARTICLE 11    ENFORCEMENT**

### **Section 11-1    Enforcement Program**

The Division provides these regulations to assist operators with maintaining safe use, manufacture, possession, sale, storage, transport, or disposal of explosives materials or blasting agents. When circumstances regarding regulated explosives materials or blasting agents are found to be not in compliance with these regulations, the Division will pursue enforcement actions against the operator.

The enforcement process will include requiring the permittee to make repairs and/or upgrades, provide records, and complete other actions necessary to come back into compliance. During and following the enforcement process, the Director will continue to assist the operator to remain in compliance. The enforcement process may include monetary penalties up to \$1,000 per violation per day according to statute (C.R.S. 8-20-104) if the enforcement obligations are not implemented according to the required schedule.

#### **Section 11-1-1 Notice of Violation**

- (A) A notice of violation (NOV) may be issued when a regulated party is found to be out of compliance with these regulations (7 C.C.R. 1101-9) and/or statutes (C.R.S. 8-20, 9-6 and 9-7). The notice of violation may include fines and/or an order to cease explosives-related operations until all violations are satisfactorily corrected.
- (B) Within 10 working days after an NOV has been issued, the person issued the NOV may file a written request with the Division for an informal conference regarding the NOV. Upon receipt of the request, the Division shall provide the alleged violator with notice of the date, time and place of the informal conference. During the conference, the alleged violator and Division personnel may present information and arguments regarding the allegations and requirements of the NOV.
- (C) Within 20 days after the informal conference, the Division shall uphold, modify, or strike the allegations within the NOV in the form of a settlement agreement or an enforcement order.
- (D) If the alleged violator fails to timely request an informal conference, the terms of the NOV become a binding enforcement order not subject to further review.

#### **Section 11-1-2 Enforcement Order**

- (A) An enforcement order may be issued when the violations included within an NOV are not resolved within the prescribed time frame or the schedule set forth in a settlement agreement is not met.
- (B) An enforcement order may include increased fines up to \$1,000 per violation for each day of violation. In addition, the enforcement order may include shut-down of the explosives-related operation, suspension and/or revocation of an explosives permit.
- (C) An alleged violator may appeal the enforcement order to the Division for a hearing under C.R.S. 24-4-105. The Division shall then issue a final decision which is subject to judicial review under C.R.S. 24-4-106.

**CYNTHIA H. COFFMAN**  
Attorney General  
**MELANIE J. SNYDER**  
Chief Deputy Attorney General  
**LEORA JOSEPH**  
Chief of Staff  
**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000  
  
**Office of the Attorney General**

Tracking number: 2018-00443

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

Division of Oil and Public Safety

**on 10/11/2018**

7 CCR 1101-9

**EXPLOSIVES REGULATIONS**

The above-referenced rules were submitted to this office on 10/16/2018 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, 2018 11:25:54

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General

## **Permanent Rules Adopted**

**Department**

Department of State

**Agency**

Secretary of State

**CCR number**

8 CCR 1505-6

**Rule title**

8 CCR 1505-6 RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE 1 - eff  
11/30/2018

**Effective date**

11/30/2018

**COLORADO SECRETARY OF STATE**

**8 CCR 1505-6**

**Rules Concerning Campaign and Political Finance**

**Rules as Adopted – Clean  
October 11, 2018**

*(Italic blue font text indicate publication notes and annotations)*

*[Current 8 CCR 1505-6 is amended as follows:]*

**Rule 18. Penalties, Violations, and Complaints**

**18.2 Complaints.**

18.2.1 Any person who believes that a violation of Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, or the Secretary of State's rules concerning campaign and political finance has occurred may file a complaint with the Secretary of State.

18.2.2 Complaints must be filed no later than 90 days after the complainant knew or should have known by the exercise of reasonable diligence of the alleged violation.

18.2.3 Complaints must be filed in writing and signed by the complainant on the form provided by the Secretary of State. The complaint must identify the respondent or respondents and the complainant must provide the information required on the form.

18.2.4 Upon receipt of a complaint, the Secretary of State's elections division must notify the respondent of the complaint by email, or by mail if email is unavailable.

18.2.5 Complaints made against any candidate for Secretary of State will be forwarded to the attorney general's office for review in accordance with this Rule 18.2.

**18.2.6 Initial review**

(a) The elections division will review the complaint to determine:

- (1) Whether the complaint was timely filed under Rule 18.2.2,
- (2) Whether the complainant has specifically identified one or more violations of Colorado Constitution Article XXVIII, the Fair Campaign Practices Act, or the Secretary of State's rules concerning campaign and political finance, and
- (3) Whether the complainant has alleged sufficient facts to support a legal and factual basis for the complaint.

- (b) Within 10 business days of receiving the complaint, the elections division must take one or more of the following actions:
  - (1) If the elections division determines that the complaint was not timely filed, has not specifically identified one or more violations, or that the complainant did not assert facts sufficient to support the alleged violations, the elections division will dismiss the complaint and notify the complainant and respondent of the reasons for dismissal. The dismissal is a final agency action, and subject to review under section 24-4-106, C.R.S.
  - (2) If the elections division determines that the complaint alleges one or more curable violations as described in Rule 18.2.7, the elections division will notify the respondent and provide an opportunity to cure.
  - (3) If the elections division determines that the complaint alleges one or more violations that require a factual finding or legal interpretation, the elections division will conduct additional review under Rule 18.2.8 to determine whether to file a complaint with a hearing officer.

#### 18.2.7 Curing violations

- (a) Upon the election division's determination that a complaint alleges a failure to file or otherwise disclose required information, or other curable violation, the elections division will notify the respondent by email, or by mail if email is unavailable, of the curable deficiencies alleged in the complaint.
- (b) The respondent has 10 business days from the date the notice is mailed to file an amendment to the relevant report or reports that cures any deficiencies specified in the notice.
- (c) The respondent must provide the elections division with notice of its intent to cure on the form provided by the Secretary of State and include a copy of any amendments.
- (d) The elections division may ask the respondent to provide additional information, and may grant an extension of time to file a notice of intent to cure in order to respond to such a request.
- (e) After the period for cure, the elections division will determine whether the respondent cured the violations, and if so, whether the respondent substantially complied or acted in good faith under Rules 18.2.7(f) and 18.2.7(g).
  - (1) If the elections division determines that the respondent substantially complied or acted in good faith, the elections division will dismiss the complaint.

- (2) If the elections division determines that the respondent neither substantially complied nor acted in good faith, the elections division will conduct additional review under Rule 18.2.6 to determine whether to file the complaint with a hearing officer.
  - (3) The election division's determination under this subsection is a final agency action, subject to review under section 24-4-106, C.R.S.
- (f) In determining whether an entity substantially complied as that term is used in Rule 18.2.7, the elections division must consider:
  - (1) The extent of the respondent's noncompliance;
  - (2) The purpose of the provision violated and whether that purpose was substantially achieved despite the noncompliance; and
  - (3) Whether the noncompliance can properly be viewed as an intentional attempt to mislead the electorate or election officials.
- (g) In determining whether an entity registered or disclosed in "Good faith" as that term is used in Rule 18.2.7, the elections division may consider whether ten percent or less of either the entity's disclosures or, alternatively, the reported dollar amounts required on the report or appearing on the filed reports at issue in the complaint are out of compliance.
- (h) If the elections division determines that respondent failed to cure any alleged deficiency, the elections division will conduct additional review under Rule 18.2.8 to determine whether to file the complaint with a hearing officer.

#### 18.2.8 Investigation and enforcement

- (a) The elections division must investigate each unresolved or uncured complaint to determine whether to file a complaint with the hearing officer described in Rule 18.2.9(b).
  - (1) If the elections division determines that it will not file a complaint with a hearing officer because there is not sufficient information to support the allegations or for any other reason, it must dismiss the complaint within 30 days of the election division's initial determination under Rule 18.2.6(b).
  - (2) If the elections division files a complaint with a hearing officer, it must send notice, including a copy of the filing, by certified mail, return receipt requested, to the complainant and the respondent within one business day of referral.
- (b) If the elections division files a complaint with a hearing officer under this rule, it is responsible for conducting such discovery as may be necessary

for effectively prosecuting the complaint, supplementing or amending the complaint with such additional or alternate allegations as may be justified by the evidence, amending the complaint to strike allegations that are not justified by the evidence, and in all other respects, prosecuting the complaint.

- (c) The complainant or any other non-respondent is not a party to the review, except that a complainant may seek permission from the hearing officer to file written legal arguments or factual documentation, or both, as a friend-of-the-court. A person's status as a complainant is not sufficient to establish that he or she may be affected or aggrieved by the Secretary's action on the complaint. A complainant may also seek review of a final agency action under Rules 18.2.6(b)(1) and 18.2.9(c) under section 24-4-106, C.R.S.
- (d) If the election division fails to file a complaint with the hearing officer within 30 days as outlined in Rule 18.2.8(a)(1), the complaint is deemed dismissed under Rule 18.2.6(b)(1).

#### 18.2.9 Hearings

- (a) The hearing officer must be an individual authorized under section 24-4-105(3), C.R.S.
- (b) Hearings conducted by a hearing officer under Rule 18.2 must be in accordance with the provisions of section 24-4-105, C.R.S., except that a hearing officer must hold a hearing within 15 business days of the filing of the complaint, and must make a determination within 15 days of the hearing. The respondent must be granted an extension of up to 30 days upon respondent's motion, or longer upon a showing of good cause.
- (c) Determinations made by the hearing officer must be made under section 24-4-105, C.R.S., and are subject to review under section 24-4-106, C.R.S.

#### 18.2.10 Any person seeking guidance on the application of Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, or the Secretary of State's rules concerning campaign and political finance may request that the Secretary of State issue an advisory opinion regarding their specific activities.

- (a) The Secretary of State will determine, at his or her discretion, whether to issue an advisory opinion. In making the determination, the Secretary will consider:
  - (1) Whether the advisory opinion will terminate a controversy or remove uncertainties as to the application of the requestor of any law;
  - (2) Whether the request involves a subject, question, or issue that concerns a formal or informal matter or investigation currently pending before the Secretary of State or a court; and

(3) Whether the request seeks a ruling on a moot or hypothetical question.

(b) A person may rely on the Secretary of State's advisory opinion as an affirmative defense to any complaint filed under this Rule.

18.2.11 The elections division will make documents related to a complaint publicly available as follows:

(a) The original complaint, notice of initial review, final agency decision, and any complaint filed by the elections division with a hearing officer will be publicly available at the time the elections division provides the document to the respondent.

(b) Any additional documentation related to the complaint, including a notice of intent to cure and supporting evidence, or documents related to the elections division's investigation, will be publicly available at the time the elections division issues a final agency decision or files a complaint with a hearing officer.

(c) The elections division may redact any document related to a complaint if it is necessary to protect any person's private or confidential information.

18.2.12 The Office of Administrative Courts must remand back to the Secretary of State all pending complaints that were filed with the Secretary of State before June 19, 2018. Those complaints may be re-filed under this Rule 18.2 within 180 days of remand, even if the alleged violations fall outside the period for filing set forth in Rule 18.2.2.



**CYNTHIA H. COFFMAN**  
Attorney General

**MELANIE J. SNYDER**  
Chief Deputy Attorney General

**LEORA JOSEPH**  
Chief of Staff

**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000

**Office of the Attorney General**

Tracking number: 2018-00402

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

Secretary of State

**on 10/11/2018**

8 CCR 1505-6

**RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE**

The above-referenced rules were submitted to this office on 10/11/2018 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 30, 2018 12:21:25

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General

## **Permanent Rules Adopted**

**Department**

Department of Public Safety

**Agency**

Division of Homeland Security and Emergency Management

**CCR number**

8 CCR 1507-45

**Rule title**

8 CCR 1507-45 School Security Disbursement Program 1 - eff 11/30/2018

**Effective date**

11/30/2018



**DEPARTMENT OF PUBLIC SAFETY  
DIVISION OF HOMELAND SECURITY AND EMERGENCY  
MANAGEMENT**

**School Security Disbursement Program**

**8 CCR 1507-45**

**STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE**

Pursuant to Section 24-33.5-1810 (7), C.R.S., the Executive Director of the Department of Public Safety shall promulgate rules to establish the time frames for submitting disbursement applications and awarding disbursements and to specify any additional information that must be included in disbursement applications as described in subsection (4)(f) of section 24-33.5-1810.

The General Assembly declared that the department distribute the money credited to the school security disbursement program account for the disbursement program as quickly as practicable based on the receipt of qualifying applications. The absence of implementing rules to carry out the purpose of the statute would be contrary to this declaration. For these reasons, it is imperatively necessary that the proposed rules be adopted.

---

Stan Hilkey  
Executive Director, Department of Public Safety

---

Date of Adoption

**Colorado Department of Public Safety**

**Division of Homeland Security and Emergency Management**

**8 CCR 1507-45**

**School Security Disbursement Program**

**1. Authority**

This regulation is adopted pursuant to the authority in section 24-33.5-1810 (7), C.R.S. and is intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq. (the "APA").

**2. Scope and Purpose**

This regulation shall govern the implementation of the School Security Disbursement Program, which includes the time frames for applying for this program, the form of the program application, and the time frames for distributing program funds.

**3. Applicability**

The provisions of these rules shall be applicable to all eligible applicants and recipients of program funds as provided by law.

**4. Definitions**

"Disbursement Program" means the School Security Disbursement Program to disburse funds to local education providers for the purpose set forth in 24-33.5-1810(3), C.R.S. to improve security in public school facilities or vehicles.

"Local Education Provider" means a school district, a charter school that is authorized pursuant to part 1 of article 30.5 of title 22, an institute charter school authorized pursuant to part 5 of article 30.5 of title 22, or board of cooperative services as defined in section 22-5-103, C.R.S.

"Recipient" means an eligible applicant receiving an award.

"Award" means financial assistance that provides support to accomplish a public purpose given by the state to an eligible recipient.

"Period of Performance" means the period of time during which the recipient is required to complete the approved activities and to receive and expend approved funds.

"Match Amount or Local Share" means the portion of the project borne by the applicant, not borne by the State. Local share can include cash and/or in-kind (non-cash contributions.)

**5. Program Requirements**

**5.1 Eligibility**

- A. Applicant must be a local education provider, including any combination of local education providers who wish to apply together as a single regional applicant, in order to apply.
- B. Eligible Applicants must submit an Application developed by the Colorado Division of Homeland Security and Emergency Management, Office of Grants Management in conformance with the Application and the terms of the program guidance described below.
- C. The program funds may only be used for the following purposes:
  - 1. Capital construction that improves the security of a public school facility or public

school vehicle, including any structure or installed hardware, device, or equipment that protects a public school facility or public school vehicle and the students, educators, and other individuals who attend, work in, or visit a public school facility or are transported in a public school vehicle from threats of physical harm including but not limited to any structure or installed hardware, device, or equipment that:

- Prevents the entry of unauthorized individuals into a public school facility or a protected space within a public school facility or onto a public school vehicle;
  - Prevents undesired objects and substances from entering a public school facility or public school vehicle;
  - Sounds warnings when a threat is present;
  - Can be used to expedite communication when a threat is present; or
  - Enables authorized individuals to visually monitor the public school facility or its ground or the public school vehicle.
2. Training in student threat assessment, which training is provided to all school building staff who have contact with students;
  3. Training related to school security for on-site school resource officers employed by the local education provider;
  4. School emergency response training for all school building staff.
- D. The contract agreement between the State and the recipient(s) of the program will specify additional requirements, including, but not limited to: performance measures, reporting requirements, and monitoring of recipient's activities and expenditures.
- E. Additionally, the following criteria will be evaluated in awarding any grant:
1. The likely effectiveness of the applicant's use of the disbursed money to improve security in public school facilities or vehicles.
  2. The availability and commitment of the applicant to use financial resources (cash or in-kind) to provide local match to support this program.

## 5.2 Award Details

- A. Period of Performance: Twenty-Eight (28) Months
- B. Funding Instrument: Discretionary

## 5.3 Time Frames for Application

### A. Time Frames

Application Submission Deadline:	January 5, 2019; 5:00 PM MST
Grant Awarded to Applicants Deadline:	March 1, 2019
Grant Fund Distribution Deadline:	April 30, 2019
Period of Performance – 28 months:	March 1, 2019 – June 30, 2021

### B. Restrictions

1. Applications that are not submitted by the stated Application Submission Deadline will not be reviewed or considered for funding.
2. Pre award costs are NOT allowed under this program (costs incurred or work completed

prior to application).

#### **5.4 Application Submissions**

- A. Applicants must submit a hard copy of their signed application via U.S. mail and email an electronic copy of their application as specified in the program application.

#### **5.5 Grant Guidance**

The DHSEM Office of Grants Management is responsible for the implementation of this grant program and will develop and publish a grant application and guidance.

**CYNTHIA H. COFFMAN**  
Attorney General

**MELANIE J. SNYDER**  
Chief Deputy Attorney General

**LEORA JOSEPH**  
Chief of Staff

**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000

**Office of the Attorney General**

Tracking number: 2018-00438

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

Division of Homeland Security and Emergency Management

**on 10/10/2018**

8 CCR 1507-45

School Security Disbursement Program

The above-referenced rules were submitted to this office on 10/11/2018 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 23, 2018 15:20:34

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General

## **Permanent Rules Adopted**

### **Department**

Department of Health Care Policy and Financing

### **Agency**

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

### **CCR number**

10 CCR 2505-10

### **Rule title**

10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE,  
AND RULE HISTORY 1 - eff 11/30/2018

### **Effective date**

11/30/2018



**DO NOT PUBLISH THIS PAGE**

Title of Rule: Revision to the Medical Assistance Rule Concerning Redetermination of Eligibility and Transferring Requirements at 8.100.3

Rule Number: MSB 18-07-13-A

Division / Contact / Phone: Health Information Office / Jennifer VanCleave / 303-866-6204

**SECRETARY OF STATE**

**RULES ACTION SUMMARY AND FILING INSTRUCTIONS**

**SUMMARY OF ACTION ON RULE(S)**

1. Department / Agency Health Care Policy and Financing / Medical Services  
Name: Board
2. Title of Rule: MSB 18-07-13-A, Revision to the Medical Assistance Rule Concerning Redetermination of Eligibility and Transferring Requirements at 8.100.3
3. This action is an adoption an amendment  
of:
4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):  
Sections(s) 8.100.3C and 8.100.3P, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).
5. Does this action involve any temporary or emergency rule(s)? No  
If yes, state effective date:  
Is rule to be made permanent? (If yes, please attach notice of Yes hearing).

**PUBLICATION INSTRUCTIONS\***

Replace the current text at 8.100.3.C with the proposed text beginning at 8.100.3.C.1 through the end of 8.100.3.C.7. Replace the current text at 8.100.3.P with the proposed text beginning at 8.100.3.P.1 through the end of 8.100.3.P.5. This rule is effective 11/30/2018.

**DO NOT PUBLISH THIS PAGE**

Title of Rule: Revision to the Medical Assistance Rule Concerning Redetermination of Eligibility and Transferring Requirements at 8.100.3

Rule Number: MSB 18-07-13-A

Division / Contact / Phone: Health Information Office / Jennifer VanCleave / 303-866-6204

**STATEMENT OF BASIS AND PURPOSE**

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

The proposed rule change will amend 10 CCR 2505-10 8.100.3.C and 8.100.3.P to remove incorrect references. Currently, the rules guide individuals to review the User Reference Guide to determine timeline requirements when transferring a case to another county, as well as processing an eligibility redetermination. The User Reference Guide is no longer used by the Department, and the deletion of the obsolete reference is needed to comply with an audit finding. Other training documents and processing guidance are now in place, and eligibility sites have their cases reviewed for timely processing of applications, redeterminations, and other changes. Additionally, 8.100.3.P.5 indicates that documents received in relation to eligibility redeterminations must be thoroughly reviewed within ten working days. The deletion of this language will not change how eligibility is determined or who would be determined eligible.

2. An emergency rule-making is imperatively necessary

- ☐ to comply with state or federal law or federal regulation and/or  
☐ for the preservation of public health, safety and welfare.

Explain:

3. Federal authority for the Rule, if any:

42 C.F.R. §435.912

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2017);  
25.5-4-205, C.R.S. (2017)

Initial Review

**[date]**

Final Adoption

**[date]**

Proposed Effective Date

**[date]**

Emergency Adoption

**[date]**

**DOCUMENT #**

## **DO NOT PUBLISH THIS PAGE**

Title of Rule: Revision to the Medical Assistance Rule Concerning Redetermination of Eligibility and Transferring Requirements at 8.100.3

Rule Number: MSB 18-07-13-A

Division / Contact / Phone: Health Information Office / Jennifer VanCleave / 303-866-6204

### **REGULATORY ANALYSIS**

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

This rule change will only delete language that references a document no longer in use by the Department. It does not change eligibility rules or eligibility site processes, so there is no anticipated cost. The benefit will be that our rules will be in compliance with an audit finding.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

Because eligibility rules and processes are not affected by this rule change, there are no anticipated costs/impacts. The language must be updated to comply with an audit finding.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

There are no costs to the Department as the update only removes language referring to an obsolete document.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

There are no costs of the proposed rule, though benefits include the Department coming into compliance with audit findings. Not implementing the proposed rule change would mean the Department would remain out of compliance with the audit finding requiring this change.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There are no less costly or intrusive methods for achieving the purpose of the proposed rule.

**DO NOT PUBLISH THIS PAGE**

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

There were no alternative methods considered for the proposed rule.

## **8.100 MEDICAL ASSISTANCE ELIGIBILITY**

### **8.100.3.C. Transferring Requirements**

1. When a family or individual moves from one county to another within Colorado, the client shall report the change of address to the eligibility site responsible for the current active Medical Assistance Program case(s). If a household applies in the county in which they live and then moves out of that county during the application determination process, the originating eligibility site shall complete the processing of that application before transferring the case. The originating eligibility site shall electronically transfer the case to the new county of residence in CBMS.
2. The originating eligibility site must notify the receiving eligibility site of the client's transfer of Medical Assistance. The originating eligibility site may notify the receiving eligibility site by telephone that a client has moved to the receiving county. If the family or individual wishes to apply for other types of assistance, they shall submit a new application to the receiving eligibility site.
3. If the household is transferring the current Medical Assistance case, the receiving eligibility site cannot mandate a new application, verification, or an office visit to authorize the transfer. The receiving eligibility site can request copies of specific case documents to be forwarded from the originating eligibility site to verify the data contained in CBMS.
4. If the originating eligibility site closes a case for the discontinuation reason of "unable to locate," the applicant shall reapply at the receiving eligibility site for the Medical Assistance Program.
5. If a case is closed for any other discontinuation reason than "unable to locate" and the client provides appropriate information to overturn the discontinuation with the originating eligibility site, then, upon transfer, the receiving eligibility site shall reopen the case with case comments in CBMS. These actions shall be performed according to timeframes defined by the Department.
6. When a recipient moves from his/her home to a nursing facility in another county or when a recipient moves from one nursing facility to another in a different county:
  - a. the initiating eligibility site will transfer the case electronically in the eligibility system to the eligibility site in which the nursing facility is located when the individual is determined eligible; and
  - b. The following items shall be furnished by the initiating eligibility site to the new eligibility site in hard copy format:
    - i) 5615 that was sent to the nursing facility indicating the case transfer; and
    - ii) Identification and citizenship documents; and
    - iii) The ULTC 100.2.
7. When transferring a case, the initiating eligibility site will send an AP-5615 form to the nursing facility administrator of the new nursing facility showing the date of case closure and the current patient payment at the time of transfer. Should the Medical Assistance Program reimbursement

be interrupted, the receiving eligibility site will have the responsibility to process the application and back date the Medical Assistance eligibility date to cover the period of ineligibility.

#### **8.100.3.P. Redetermination of Eligibility**

1. A redetermination of eligibility shall mean a case review and necessary verification to determine whether the Medical Assistance Program client continues to be eligible to receive Medical Assistance. Beginning as of the case approval date, a redetermination shall be accomplished each 12 months for Title XIX Medical Assistance only cases. An eligibility site may redetermine eligibility through telephone, mail, or electronic means. The use of telephone or electronic redeterminations should be noted in the case record and in CBMS case comments.
2. The eligibility site shall promptly redetermine eligibility when:
  - a. it receives and verifies information which indicates a change in a client's circumstances which may affect continued eligibility for Medical Assistance; or
  - b. it receives direction to do so from the Department.

The eligibility site shall redetermine eligibility according to timelines defined by the Department.

3. A redetermination form is not required to be sent to the client if all current eligibility requirements can be verified by reviewing information from another assistance program, verification system, and/or CBMS. When applicable, the eligibility site shall redetermine eligibility based solely on information already available. If verification or information is available for any of the three months prior to redetermination month, no request shall be made of the client and a notice of the findings of the review will go to the client. If not all verification or information is available, the eligibility site shall only request the additional minimum verification from the client. This procedure is referenced as Ex Parte Review.
4. A redetermination form, approved by the Department, shall be mailed to the person at least 30 days prior to the first of the month in which completion of eligibility redetermination is due. The redetermination form shall be used to inform the client of the redetermination and verification needed, but the form itself cannot be required to be returned. The only verification that can be required at redetermination is the minimum verification needed to complete a redetermination of eligibility.

The redetermination form shall direct clients to review current information and to take no action if there are no changes to report in the household. Eligibility sites and CBMS shall view the absence of reported changes from the client at this redetermination period as confirmation that there have been no changes in the household. This procedure is referenced as automatic reenrollment.

The following procedures relate to mail-out redetermination:

- a. A Redetermination Form shall be mailed to the client together with any other forms to be completed;

- b. Required verification shall be returned by the client to the eligibility site no later than ten working days after receipt of request;
  - c. When the individual is unable to complete the forms due to physical, mental or emotional disabilities, or other good cause, and has no one to help him/her, the eligibility site shall either assist the client or refer him/her to a legal or other resource. When initial arrangements or a change in arrangements are being made, an extension of up to thirty days shall be allowed. The action of the eligibility site in assistance or referral shall be recorded in the case record and CBMS case comments.
  - d. The redetermination form shall require that a recipient and community spouse of a recipient of HCBS, PACE or institutional services disclose a description of any interest the individual or community spouse has in an annuity or similar financial instrument regardless of whether the annuity is irrevocable or treated as an asset. The redetermination form shall include a statement that the Department shall be a remainder beneficiary for any annuity or similar financial instrument purchased on or after February 8, 2006 for the total amount of Medical Assistance provided to the individual.
  - e. The eligibility site shall notify in writing the issuer of any annuity or financial instrument that the Department is a preferred remainder beneficiary in the annuity or similar financial instrument for the total amount of Medical Assistance provided to the individual. This notice shall require the issuer to notify the eligibility site when there is a change in the amount of income or principal that is being withdrawn from the annuity.
5. When the redetermination verification information is received by the eligibility site, it shall be date stamped. Within ten working days, the verification information shall be thoroughly reviewed for completeness, accuracy, and consistency. All factors shall be evaluated as to their effect on eligibility at that time. Verifications shall be documented in the case file and CBMS case comments. The case file shall be used as a checklist in the redetermination process, and shall be used to keep track of matters requiring further action. When additional information is needed:
- a. due to incomplete information, the request form shall be mailed back to the client with a letter specifying the items that require completion;
  - b. due to incomplete, inaccurate or inconsistent data, the Medical Assistance client shall be contacted by telephone or in writing so that the worker may secure the proper information according to timelines defined by the Department.

## **DO NOT PUBLISH THIS PAGE**

Title of Rule: Revision to the Medical Assistance Rule concerning Drug Payment Methodology for Outpatient Hospitals, Section 8.300

Rule Number: MSB 18-07-23-B

Division / Contact / Phone: Payment Reform / Andrew Abalos / (303)866-2130

## **SECRETARY OF STATE**

### **RULES ACTION SUMMARY AND FILING INSTRUCTIONS**

#### **SUMMARY OF ACTION ON RULE(S)**

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board
2. Title of Rule: MSB 18-07-23-B, Revision to the Medical Assistance Rule concerning Drug Payment Methodology for Outpatient Hospitals, Section 8.300
3. This action is an adoption of: new rules
4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):  
Sections(s) 8.300.1 and 8.300.6, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).
5. Does this action involve any temporary or emergency rule(s)? Yes  
If yes, state effective date: 8/11/2018  
Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

#### **PUBLICATION INSTRUCTIONS\***

Replace the current text at 8.300.1 with the proposed text beginning at 8.300.1 through the end of 8.300.1. Replace the current text at 8.300.6 with the proposed text beginning at 8.300.6.A.3 through the end of 8.300.6.A.3. This rule is effective 11/30/2018.



## DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule concerning Drug Payment Methodology for Outpatient Hospitals, Section 8.300

Rule Number: MSB 18-07-23-B

Division / Contact / Phone: Payment Reform / Andrew Abalos / (303)866-2130

### STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

Currently, the Department reimburses outpatient hospital drugs using the EAPG methodology. However, the EAPG methodology does not adequately account for certain new-to-market specialty drugs, which can result in underpayment to the Department's hospital providers. The proposed rule update will allow for certain specialty drugs to be reimbursed at rates in greater alignment with hospital cost experience and maintain existing levels of access to care. The proposed changes will be effective August 11, 2018.

2. An emergency rule-making is imperatively necessary

- ☐ to comply with state or federal law or federal regulation and/or  
☒ for the preservation of public health, safety and welfare.

Explain:

The existing payment methodology is placing financial strain on hospitals, which is in turn affecting how hospitals are providing care to Health First Colorado's Medicaid members

3. Federal authority for the Rule, if any:

2 U.S.C. 1396a(a)(30)(A); 42 C.F.R. 447.321

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2017);  
24-4-103(6), C.R.S., (2018), 25.5-4-401, C.R.S (2018);

Initial Review  
Proposed Effective Date

**[date]**  
**[date]**

Final Adoption  
Emergency Adoption

**[date]**  
**[date]**

**DOCUMENT #**

## **DO NOT PUBLISH THIS PAGE**

Title of Rule: Revision to the Medical Assistance Rule concerning Drug Payment Methodology for Outpatient Hospitals, Section 8.300  
Rule Number: MSB 18-07-23-B  
Division / Contact / Phone: Payment Reform / Andrew Abalos / (303)866-2130

### **REGULATORY ANALYSIS**

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

Hospitals providing certain new-to-market specialty drugs to Medicaid members in an outpatient setting will receive reimbursement in greater alignment with their costs. The Department will bear the costs of the proposed rule.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

The annual aggregate increase in outpatient hospital expenditures (including state funds and federal funds) is \$8,564,768 in FFY 2018-19 and \$21,346,040 in FFY 2019-20.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The annual aggregate increase in outpatient hospital expenditures (including state funds and federal funds) is \$8,564,768 in FFY 2018-19 and \$21,346,040 in FFY 2019-20.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Inaction would preserve the state's current forecasted expenditure, but this would have the consequence of driving hospital behavior to reduce access to care with certain specialty drugs delivered in an outpatient hospital setting for Medicaid members.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The Department determined that this was the least costly and least intrusive method for achieving the purpose of the proposed rule through discussions with hospital providers.

**DO NOT PUBLISH THIS PAGE**

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

The Department considered updating the EAPG software to a new version which would include the costs of some specialty drugs which have entered the market after 7/1/2014, but this was rejected as the EAPG methodology depends on historical cost data to determine pricing, and therefore could not incorporate the costs of all specialty drugs released after that date. Additionally, the time required to implement a new version of the EAPG software would not mitigate the concerns around access to care in the interim.

## **8.300 HOSPITAL SERVICES**

### **8.300.1 Definitions**

Abbreviated Client Stay means an Inpatient stay ending in client death or in which the client leaves against medical advice.

Concurrent Review means a review of quality, Medical Necessity and/or appropriateness of a health care procedure, treatment or service during the course of treatment.

Continued Stay Review means a review of quality, Medical Necessity and appropriateness of an Inpatient health care procedure, treatment or service.

Department means the Department of Health Care Policy and Financing.

Diagnosis Related Group (DRG) means a cluster of similar conditions within a classification system used for Hospital reimbursement. It reflects clinically cohesive groupings of Inpatient hospitalizations that utilize similar amounts of Hospital resources.

DRG Hospital means a Hospital that is reimbursed by the Colorado Medicaid program based on a system of DRGs. Those Hospitals reimbursed based on a DRG system are: General Hospitals, Critical Access Hospitals, Pediatric Hospitals, Rehabilitation Hospitals, and Long-Term Care Hospitals.

Diagnostic Services means any medical procedures or supplies recommended by a licensed professional within the scope of his/her practice under state law to enable him/her to identify the existence, nature, or extent of illness, injury or other health condition in a client.

Disproportionate Share Hospital (DSH) Factor is a percentage add-on adjustment that qualified Hospitals receive for serving a disproportionate share of low-income clients.

Emergency Care Services, for the purposes of this rule, means services for a medical condition, including active labor and delivery, manifested by acute symptoms of sufficient severity, including severe pain, for which the absence of immediate medical attention could reasonably be expected to result in: (1) placing the client's health in serious jeopardy, (2) serious impairment to bodily functions or (3) serious dysfunction of any bodily organ or part.

Enhanced Ambulatory Patient Group (EAPG) means a cluster of similar procedures within a classification system used for Hospital reimbursement. It reflects clinically cohesive groupings of services performed during Outpatient visits that utilize similar amounts of Hospital resources.

Hospital means an institution that is (1) primarily engaged in providing, by or under the supervision of physicians, Inpatient medical or surgical care and treatment, including diagnostic, therapeutic and rehabilitation services, for the sick, disabled and injured; (2) licensed, when located in Colorado, as a Hospital by the Colorado Department of Public Health and Environment (CDPHE); and, when not located in Colorado, by the state in which it is located; and (3) certified for participation in the Centers for Medicare and Medicaid Services (CMS) Medicare program. Hospitals can have multiple satellite locations as long as they meet the requirements under CMS. For the purposes of the Colorado Medicaid program, distinct part units and satellite locations are considered part of the Hospital under which they are licensed. Transitional Care Units (TCUs) are not considered part of the Hospital for purposes of the Colorado Medicaid program. Types of Hospitals are:

A General Hospital is licensed and CMS-certified as a General Hospital that, under an organized medical staff, provides Inpatient services, emergency medical and surgical care, continuous nursing services, and necessary ancillary services. A General Hospital may also offer and provide

Outpatient services, or any other supportive services for periods of less than twenty-four hours per day.

A Critical Access Hospital (CAH) is licensed and CMS-certified as a Critical Access Hospital. CAHs offer emergency services and limited Inpatient care. CAHs may offer limited surgical services and/or obstetrical services including a delivery room and nursery.

A Pediatric Hospital is licensed as a General Hospital and CMS-certified as a children's Hospital providing care primarily to populations aged seventeen years and under.

A Rehabilitation Hospital is licensed and CMS-certified as a Rehabilitation Hospital which primarily serves an Inpatient population requiring intensive rehabilitative services including but not limited to stroke, spinal cord injury, congenital deformity, amputation, major multiple trauma, fracture of femur, brain injury, and other disorders or injuries requiring intensive rehabilitation.

A Long-Term Care Hospital is licensed as a General Hospital and CMS-certified as a Long-Term Care Hospital. In general, Long-Term Care Hospitals have an average length of stay of greater than twenty-five (25) days.

A Psychiatric Hospital is licensed and CMS-certified as a Psychiatric Hospital to plan, organize, operate, and maintain facilities, beds, and treatment, including diagnostic, therapeutic and rehabilitation services, over a continuous period exceeding twenty-four (24) hours, to individuals requiring early diagnosis, intensive and continued clinical therapy for mental illness; and mental rehabilitation. A Psychiatric Hospital can qualify to be a state-owned Psychiatric Hospital if it is operated by the Colorado Department of Human Services.

Inpatient means a person who is receiving professional services at a Hospital; the services include a room and are provided on a continuous 24-hour-a-day basis. Generally, a person is considered an Inpatient by a physician's order if formally admitted as an Inpatient with the expectation that the client will remain at least overnight and occupy a bed even though it later develops that the client can be discharged or transferred to another Hospital and does not actually use a bed overnight.

Inpatient Hospital Services means preventive, therapeutic, surgical, diagnostic, medical and rehabilitative services that are furnished by a Hospital for the care and treatment of Inpatients and are provided in the Hospital by or under the direction of a physician.

Medical Necessity is defined at Section 8.076.1..

Non-DRG Hospital means a Hospital that is not reimbursed by the Colorado Medicaid program based on a system of DRGs. Psychiatric Hospitals are considered Non-DRG Hospitals since their reimbursement is based on a per diem rate.

Observation Stay means a stay in the Hospital for no more than forty-eight hours for the purpose of (a) evaluating a client for possible Inpatient admission; or (b) treating clients expected to be stabilized and released in no more than 24 hours; or (c) extended recovery following a complication of an Outpatient procedure. Only rarely will an Observation Stay exceed twenty-four hours in length.

Outlier Days mean the days in a Hospital stay that occur after the Trim Point Day.

Outpatient means a client who is receiving professional services at a Hospital, which is not providing him/her with room and board and professional services on a continuous 24-hour-a-day basis.

Outpatient Hospital Services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that are furnished to Outpatients; and are furnished by or under the direction of a physician or dentist.

Outpatient Hospital Specialty Drug means a drug identified on the carve-out drug list as found on the Colorado Department of Health Care Policy & Financing's web page.

Prospective Review means a review of quality, Medical Necessity and/or appropriateness of a health care procedure, treatment or service prior to treatment.

Rehabilitative Services means any medical or remedial services recommended by a physician within the scope of his/her practice under state law, for maximum reduction of physical or mental disability and restoration of a client to his/her best possible functional level.

Relative Weight (DRG weight or EAPG weight) means a numerical value which reflects the relative resource consumption for the DRG or EAPG to which it is assigned. Modifications to these Relative Weights are made when needed to ensure payments reasonably reflect the average cost for each DRG or EAPG. Relative Weights are intended to be cost effective, and based upon Colorado data as available.

Retrospective Review means a review of quality, Medical Necessity and/or appropriateness of a health care procedure, treatment or service following treatment. A Retrospective Review can occur before or after reimbursement has been made.

Rural Hospital means a Hospital not located within a metropolitan statistical area (MSA) as designated by the United States Office of Management & Budget.

State University Teaching Hospital means a Hospital which provides supervised teaching experiences to graduate medical school interns and residents enrolled in a state institution of higher education; and in which more than fifty percent (50%) of its credentialed physicians are members of the faculty at a state institution of higher education.

Swing Bed Designation means designation of Hospital beds in a Rural Hospital with less than 100 beds for reimbursement under Medicare for furnishing post-hospital extended care services to Medicare beneficiaries in compliance with the Social Security Act, Sections 1883 and 1866. Such beds are called "swing beds."

Trim Point Day (Outlier Threshold Day) means the day which would occur 2.58 standard deviations above the mean (average) length of stay (ALOS) for each DRG.

Urban Hospital means a Hospital located within a MSA as designated by the United States Office of Management & Budget.

Urban Safety Net Hospital means an Urban, General Hospital for which the Medicaid Inpatient eligible days plus Colorado Indigent Care Program (CICP) Inpatient days relative to total Inpatient days, rounded to the nearest percent are equal to or exceed sixty-five percent. To qualify as an Urban Safety Net Hospital, a Hospital must submit its most current information on Inpatient days by March 1 of each year for the Inpatient rates effective on July 1 of that same year. The Department may rely on other data sources for the calculation if there are discrepancies between the data submitted by the Hospital and alternative data sources such as claims or cost report data.

#### 8.300.6.A Payments to DRG Hospitals for Outpatient Services

##### 1. Payments to In-Network Colorado DRG Hospitals

Excluding items that are reimbursed according to the Department's fee schedule, Outpatient Hospital Services are reimbursed on an interim basis at actual billed charges multiplied by the Medicare cost-to-charge ratio less 28%. When the Department determines that the Medicare cost-to-charge ratio is not representative of a Hospital's Outpatient costs, the cost-to-charge ratio may be calculated using historical data. A periodic cost audit is done and any necessary retrospective adjustment is made to bring reimbursement to the lower of actual audited Medicaid cost less 28% or billed charges less 28%.

Effective September 1, 2009, Outpatient Hospital Services are reimbursed on an interim basis at actual billed charges times the Medicare cost-to-charge ratio less 29.1 percent (29.1%). When the Department determines that the Medicare cost-to-charge ratio is not representative of a hospital's outpatient costs, the cost-to-charge ratio may be calculated using historical data. A periodic cost audit is done and any necessary retrospective adjustment is made to bring reimbursement to the lower of actual audited cost less 29.1 percent (29.1%) or billed charges less 29.1 percent (29.1%).

Effective January 1, 2010, Outpatient Hospital Services are reimbursed on an interim basis at actual billed charges times the Medicare cost-to-charge ratio less 30 percent (30%). When the Department determines that the Medicare cost-to-charge ratio is not representative of a hospital's outpatient costs, the cost-to-charge ratio may be calculated using historical data. A periodic cost audit is done and any necessary retrospective adjustment is made to bring reimbursement to the lower of actual audited cost less 30 percent (30%) or billed charges less 30 percent (30%).

Effective July 1, 2010, Outpatient Hospital Services are reimbursed on an interim basis at actual billed charges times the Medicare cost-to-charge ratio less 30.7 percent (30.7%). When the Department determines that the Medicare cost-to-charge ratio is not representative of a hospital's outpatient costs, the cost-to-charge ratio may be calculated using historical data. A periodic cost audit is done and any necessary retrospective adjustment is made to bring reimbursement to the lower of actual audited cost less 30.7 percent (30.7%) or billed charges less 30.7 percent (30.7%).

Effective July 1, 2011, Outpatient Hospital Services are reimbursed on an interim basis at actual billed charges times the Medicare cost-to-charge ratio less 31.2 percent (31.2%). When the Department determines that the Medicare cost-to-charge ratio is not representative of a hospital's outpatient costs, the cost-to-charge ratio may be calculated using historical data. A periodic cost audit is done and any necessary retrospective adjustment is made to bring reimbursement to the lower of actual audited cost less 31.2 percent (31.2%) or billed charges less 31.2 percent (31.2%).

Effective July 1, 2013, Outpatient Hospital Services are reimbursed on an interim basis at actual billed charges times the Medicare cost-to-charge ratio less 29.8 percent (29.8%). When the Department determines that the Medicare cost-to-charge ratio is not representative of a hospital's outpatient costs, the cost-to-charge ratio may be calculated using historical data. A periodic cost audit is done and any necessary retrospective adjustment is made to bring reimbursement to the lower of actual audited cost less 29.8 percent (29.8%) or billed charges less 29.8 percent (29.8%).

Effective July 1, 2014, Outpatient Hospital Services are reimbursed on an interim basis at actual billed charges times the Medicare cost-to-charge ratio less 28.4 percent (28.4%). When the Department determines that the Medicare cost-to-charge ratio is not representative of a hospital's outpatient costs, the cost-to-charge ratio may be calculated using historical data. A periodic cost audit is done and any necessary retrospective adjustment is made to bring reimbursement to the lower of actual audited cost less 28.4 percent (28.4%) or billed charges less 28.4 percent (28.4%).

Effective July 1, 2015, Outpatient Hospital Services are reimbursed on an interim basis at actual billed charges times the Medicare cost-to-charge ratio less 28 percent (28%). When the Department determines that the Medicare cost-to-charge ratio is not representative of a hospital's outpatient costs, the cost-to-charge ratio may be calculated using historical data. A periodic cost audit is done and any necessary retrospective adjustment is made to bring reimbursement to the lower of actual audited cost less 28 percent (28%) or billed charges less 28 percent (28%).

Effective October 31, 2016, DRG Hospitals will be reimbursed for Outpatient Hospital Services based on a system of Enhanced Ambulatory Patient Grouping and a Hospital-specific Medicaid Outpatient base rate. The reimbursement for Outpatient Hospital Services shall be referred to as the EAPG Payment.

- a. The EAPG Payment will be equal to the EAPG Weight multiplied by the Hospital-specific Medicaid Outpatient base rate for that hospital as calculated in 10 CCR 2505-10, Section 8.300.6.A.1.k. If the EAPG Weight is modified due to any action impacting payment as described in sections 8.300.6.A.1.d-j, the modified EAPG Weight will be referred to as the EAPG Adjusted Weight. EAPG Payment will then be equal to the EAPG Adjusted Weight multiplied by the Hospital-specific Medicaid Outpatient base rate. If the billed amount is less than the EAPG Payment, reimbursement will be the billed amount.
- b. The EAPG Payment is calculated for each detail on the claim. Claim details with the same dates of service are grouped into a visit. Claims containing details describing charges for emergency room, treatment room services or patients placed under observation will have all its details grouped into a single visit.
- c. Each detail on a claim is assigned an EAPG. EAPGs can have the following types:
  - (1) Per Diem
  - (2) Significant Procedure. Subtypes of Significant Procedures Are:
    - (a) General Significant Procedures
    - (b) Physical Therapy and Rehabilitation
    - (c) Mental Health and Counseling
    - (d) Dental Procedure
    - (e) Radiologic Procedure
    - (f) Diagnostic Significant Procedure
  - (3) Medical Visit



- (4) Ancillary
- (5) Incidental
- (6) Drug
- (7) Durable Medical Equipment
- (8) Unassigned

- d. A detail will be subject to EAPG Consolidation when it is assigned the same Significant Procedure EAPG as a detail not already subjected to EAPG Consolidation for that visit. EAPG Consolidation will also occur for details assigned EAPGs considered to be clinically similar to another EAPG during the visit. Details subject to EAPG Consolidation will have an EAPG Payment calculated using an EAPG Weight of 0.
- e. A detail will be subject to EAPG Packaging when its assigned EAPG is considered an ancillary service to a Significant Procedure EAPG or Medical Visit EAPG present on the claim for that visit. Details describing additional undifferentiated medical visits and services will be exempt from EAPG Packaging. A detail is also subject to EAPG Packaging when it is assigned a Medical Visit EAPG while a Significant Procedure EAPG is present on the claim for that visit. Details assigned Significant Procedure EAPGs that are of subtypes Physical Therapy and Rehabilitation and Radiologic Significant Procedure do not cause details with Medical Visit EAPGs to be subject to EAPG Packaging. Details subject to EAPG Packaging will be calculated using an EAPG Weight of 0.
- f. A detail will qualify for Multiple Significant Procedure Discounting when a Significant Procedure of the same subtype is present on the claim for that visit. Details qualifying for Multiple Significant Procedure Discounting are ordered by their EAPG Weight, by visit. Per visit, the qualifying detail with the greatest EAPG Weight will have its EAPG Payment calculated at 100 percent (100%) of its EAPG Weight. The qualifying detail for that visit with the next greatest EAPG Weight will have its EAPG Payment calculated at 50 percent (50%) of its EAPG Weight. All other qualifying details for that visit will have its EAPG Payment calculated at 25 percent (25%) of its EAPG Weight.
- g. Details assigned the same Ancillary EAPG on the same visit will qualify for Repeat Ancillary Discounting. EAPG Payment for the first occurrence of a detail qualifying for Repeat Ancillary Discounting for that visit and EAPG is calculated using 100 percent (100%) of its EAPG Weight. EAPG Payment for the second occurrence of a detail qualifying for Repeat Ancillary Discounting for that visit and EAPG is calculated using 50 percent (50%) of its EAPG Weight. EAPG Payment for all other details qualifying for Repeat Ancillary Discounting for that visit and EAPG will be calculated using 25 percent (25%) of their EAPG Weights.
- h. Details describing terminated procedures will be subject to Terminated Procedure Discounting. EAPG Payment for a detail subject to Terminated Procedure Discounting is calculated using 50 percent (50%) of the EAPG Weight. Terminated procedures are not subject to other types of discounting.

- i. Details describing bilateral services will have EAPG Payment calculated using 150 percent (150%) of the EAPG Weight or the EAPG Payment not resulting from Terminated Procedure Discounting.
- j. Details describing 340B Drugs will have an EAPG Payment calculated using 80 percent (80%) of the EAPG Weight or the EAPG Payment not resulting from Terminated Procedure Discounting.
- k. The Hospital-specific Medicaid Outpatient base rate for the year of the methodology implementation for each hospital is calculated using the following method.
  - (1) Assign each hospital to one of the following peer groups based on hospital type and location:
    - (a) Pediatric Hospitals
    - (b) Urban Hospitals
    - (c) Rural Hospitals
  - (2) Process Medicaid outpatient hospital claims from state fiscal year 2015, known as the Base Year, through the methodology described in 8.300.6.A.1.a-j using Colorado's EAPG Relative Weights. For lines with incomplete data, estimations of EAPG Adjusted Weights will be used.
  - (3) Calculate costs from hospital charge data using the computation of the ratio of costs to charges from the CMS-2552-10 Cost Report. After the application of inflation factors to account for the difference in cost and caseload from state fiscal year 2015 to the implementation period, costs and EAPG Adjusted Weights are aggregated by peer group and are used to form peer group base rates. Each hospital is assigned the peer group base rate depending on their respective peer group assigned in 8.300.6.A.1.k.(1).
  - (4) For each hospital, calculate the projected EAPG payment by multiplying its peer group base rate by its hospital-specific EAPG Adjusted Weights as calculated in 8.300.6.A.1.k.(2). If the projected payment exceeds a +/- 10% difference in payment from the prior outpatient hospital reimbursement methodology, the hospital will receive an adjustment to their base rate to cap its resulting gains or losses in projected EAPG payments to 10%.
  - (5) For all hospitals, the Medicaid Outpatient base rate, as determined in 8.300.6.A.k.(1)-(4), shall be adjusted by an equal percentage, when required due to changes in the available funds appropriated by the General Assembly. The application of this change to the Medicaid Outpatient base rate shall be determined by the Department.

## 2. Payments to Out-of-Network DRG Hospitals

Excluding items that are reimbursed according to the Department's fee schedule, border-state Hospitals and out-of-network Hospitals, including out-of-state Hospitals, shall be paid 30% of billed charges for Outpatient Hospital Services. Consideration of additional

reimbursement shall be made on a case-by-case basis in accordance with supporting documentation submitted by the Hospital.

Effective October 31, 2016, Out-of-Network DRG Hospitals will be reimbursed for Outpatient Hospital Services based the system of Enhanced Ambulatory Patient Grouping described in 10 CCR 2505-10 Section 8.300.6.A.1. Such hospitals will be assigned to a Rural or Urban peer group depending on hospital location and will receive a base rate of 90% of the respective peer group base rate as calculated in 8.300.6.A.1.k.(3). Out-of-Network DRG Hospitals will periodically have their Medicaid Outpatient base rates adjusted as determined in 8.300.6.A.k.(5).

3.        Payments for Outpatient Hospital Specialty Drugs

Effective August 11, 2018, for services meeting the criteria of an Outpatient Hospital Specialty Drug that would have otherwise been compensated through the EAPG methodology, a hospital must submit a request for authorization to the Department prior to administration of the drug. If the request is approved, then the payment will be negotiated between the Department and the hospital on a case-by-case basis.

**DO NOT PUBLISH THIS PAGE**

Title of Rule: Revision to the Medical Assistance Rule Concerning Community Clinic and Community Clinic and Emergency Center, Section 8.320

Rule Number: MSB 18-02-09-B

Division / Contact / Phone: Operations Section / Russ Zigler / 303-866-5927

**SECRETARY OF STATE**

**RULES ACTION SUMMARY AND FILING INSTRUCTIONS**

**SUMMARY OF ACTION ON RULE(S)**

1. Department / Agency Health Care Policy and Financing / Medical Services  
Name: Board
2. Title of Rule: MSB 18-02-09-B, Revision to the Medical Assistance Rule Concerning Community Clinic and Community Clinic and Emergency Center, Section 8.320
3. This action is an adoption new rules  
of:
4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):  
Sections(s) 8.320, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).
5. Does this action involve any temporary or emergency rule(s)? No  
If yes, state effective date:  
Is rule to be made permanent? (If yes, please attach notice of hearing). <Select One>

**PUBLICATION INSTRUCTIONS\***

Replace the current text at 8.320 with the proposed text beginning at 8.320 through the end of 8.320.4.A. This rule is effective 11/30/2018.

**DO NOT PUBLISH THIS PAGE**

Title of Rule: Revision to the Medical Assistance Rule Concerning Community Clinic and Community Clinic and Emergency Center, Section 8.320

Rule Number: MSB 18-02-09-B

Division / Contact / Phone: Operations Section / Russ Zigler / 303-866-5927

**STATEMENT OF BASIS AND PURPOSE**

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

The rule will add a Community Clinic and Community Clinic and Emergency Center (CC/CCEC) provider type eligible to be reimbursed for services to Health First Colorado clients. CCs and CCECs currently bill under the hospital provider type, however, the CC/CCEC license does not meet the definition of a hospital. In order to cover services from a CC/CCEC, a new provider type is necessary. CC/CCEC facilities are licensed under Colorado Department of Public Health and Environment rule 6 CCR 1011, Chapter IX. By adding this provider type, CC/CCEC facilities must re-enroll with Health First Colorado to be reimbursed for services under a distinct provider identification number. The rule also requires CC/CCEC facilities to be Medicare certified as part of a Medicare participating hospital to be reimbursed for services to Health First Colorado clients.

2. An emergency rule-making is imperatively necessary

- ☐ to comply with state or federal law or federal regulation and/or  
☐ for the preservation of public health, safety and welfare.

Explain:

3. Federal authority for the Rule, if any:

42 USC 1396a(a)(32)(A) / 42 CFR 447.321

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2017);

## **DO NOT PUBLISH THIS PAGE**

Title of Rule: Revision to the Medical Assistance Rule Concerning Community Clinic and Community Clinic and Emergency Center, Section 8.320

Rule Number: MSB 18-02-09-B

Division / Contact / Phone: Operations Section / Russ Zigler / 303-866-5927

### **REGULATORY ANALYSIS**

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

Community Clinic and Community Clinic and Emergency Center (CC/CCEC) facility owners will be affected by the proposed rule. CC/CCEC facility owners will bear the cost of enrolling the facilities under a new provider identification number and billing under that number. CC/CCEC facilities will also bear the cost of being Medicare certified as part of a Medicare participating hospital to be reimbursed for services to Health First Colorado clients. By creating a new provider type that allows CC/CCECs to bill Medicaid clients, rather than restricting them from billing Medicaid, the rule preserves client access to care, both for emergency services and for other services available at the locations.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

CC/CCEC owners will bear the administrative costs of enrollment and billing under the unique identification number, and of Medicare certification as part of a Medicare participating hospital. The Department will reimburse these new provider types for claims in the same way it reimburses hospitals, so clients will not see additional out-of-pocket bills for services provided at these facilities.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The Department must establish a unique CC/CCEC provider type in interChange (the Department's Medicaid Management Information System). There are no additional costs to the Department or any other agency.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The proposed rule will allow providers with this licensure to continue to bill Medicaid and receive reimbursement at the hospital rate, but will allow the Department to identify the types of services provided by CC/CCEC facilities, the utilization patterns

**DO NOT PUBLISH THIS PAGE**

of our members, and other factors unique to these facilities. Prior to distinguishing claims by provider type, the Department was unable to differentiate between the services that originated at a CC/CCEC from those that originated at a parent hospital. Accordingly, inaction would continue to perpetuate these transparency and service location issues.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There are no less costly or less intrusive methods to add a provider type for CC/CCEC facilities.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

Originally, the Department directed the entities with a CC/CCEC license to enroll as a physician office. The entities strongly objected, a physician office does not receive dedicated payment covering facility expenses. The Department agreed to create a provider type that will be able to receive dedicated payment for facility expenses.

### **8.310.3.C. Non-Covered Services**

The following are non-covered services under the Colorado Medicaid Dialysis Center benefit:

1. Personal care items such as slippers or toothbrushes.

## **8.320 COMMUNITY CLINIC AND COMMUNITY CLINIC AND EMERGENCY CENTER**

### **8.320.1 Definitions**

A. Community Clinic (CC) means a health care facility that provides health care services on an ambulatory basis and

is not licensed as an on-campus department or service of a hospital,

is not listed as an off-campus location under a hospital's license,

is not a facility that functions only as an office for the practice of medicine or only for the delivery of primary care services by other licensed or certified practitioners,

is not licensed as an Ambulatory Surgery Center,

is not a federally qualified health center,

is not a rural health clinic,

and is not operated by the Department of Corrections.

B. A Community Clinic and Emergency Center (CCEC) is a Community Clinic that delivers emergency care services.

C. CMS means the Centers for Medicare and Medicaid Services.

D. Department means the Department of Health Care Policy and Financing.

E. Emergency Care Services, for the purposes of this rule, means services for a medical condition, including active labor and delivery, manifested by acute symptoms of sufficient severity, including severe pain, for which the absence of immediate medical attention could reasonably be expected to result in: (1) placing the client's health in serious jeopardy, (2) serious impairment to bodily functions or (3) serious dysfunction of any bodily organ or part.

F. Observation Stay means a stay in the CC or CCEC for the purpose of (a) evaluating a client for possible Inpatient admission; or (b) treating clients expected to be stabilized and released in no more than 24 hours; or (c) extended recovery following a complication of an Outpatient procedure.

### **8.320.2 Requirements for Participation**

#### **8.320.2.A.**

1. The facility is licensed as a CC or CCEC by the Colorado Department of Public Health and Environment (CDPHE) in accordance with CDPHE rule at 6 CCR 1011-1, Chapter IX; and



2. The facility location is Medicare-certified by CMS and owned by a Medicare participating hospital.

### **8.320.3 Services**

**8.320.3.A** The following services provided by a CC or CCEC are eligible for reimbursement:

1. Outpatient services, as defined in the Department's rule at 10 CCR 2505-10, section 8.300.3.B, section 8.300.B.2, 8.300.B.3; and
2. Observation stays no longer than 24 hours.

### **8.320.4 Reimbursement**

**8.320.4.A** CC and CCEC services are reimbursed as:

1. Outpatient services, in accordance with the Department's rule at 10 CCR 2505-10, section 8.300.6, using the hospital base rate for the hospital that is identified in the CMS certification of the CC or CCEC.

## **8.390 LONG TERM CARE SINGLE ENTRY POINT SYSTEM**

The long term care Single Entry Point system consists of Single Entry Point agencies, representing geographic districts throughout the state, for the purpose of enabling persons in need of long term services and supports to access appropriate services and supports.

### **8.390.1 DEFINITIONS**

**CYNTHIA H. COFFMAN**  
Attorney General  
**MELANIE J. SNYDER**  
Chief Deputy Attorney General  
**LEORA JOSEPH**  
Chief of Staff  
**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000  
  
**Office of the Attorney General**

Tracking number: 2018-00436

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

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

**on 10/12/2018**

10 CCR 2505-10

**MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE, AND RULE HISTORY**

The above-referenced rules were submitted to this office on 10/12/2018 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 23, 2018 09:39:44

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General

## **Permanent Rules Adopted**

### **Department**

Department of Human Services

### **Agency**

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

### **CCR number**

12 CCR 2509-3

### **Rule title**

12 CCR 2509-3 PROGRAM AREAS, CASE CONTACTS, AND ONGOING CASE  
REQUIREMENTS 1 - eff 12/01/2018

### **Effective date**

12/01/2018

## (12 CCR 2509-3)

### 7.205 CASE CLOSURE [Eff. 1/1/15]

A. When there is no court jurisdiction and at least one of the following are met, services shall be terminated and the case shall be closed.

1. Specific program eligibility criteria are not met.
2. Client no longer needs the service.
3. Client has died.
4. Services are completed.
5. The child reaches his/her 21st birthday.

B. The worker shall document the following in the case record:

1. Reason(s) for case closure.
2. A summary of services provided, which includes progress made toward stated goals.
3. A safety assessment at case closure for all program area 4 and 5 cases.

**CYNTHIA H. COFFMAN**  
Attorney General

**MELANIE J. SNYDER**  
Chief Deputy Attorney General

**LEORA JOSEPH**  
Chief of Staff

**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000

**Office of the Attorney General**

Tracking number: 2018-00376

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

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

**on 10/05/2018**

12 CCR 2509-3

**PROGRAM AREAS, CASE CONTACTS, AND ONGOING CASE REQUIREMENTS**

The above-referenced rules were submitted to this office on 10/12/2018 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 23, 2018 09:34:04

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General

## **Permanent Rules Adopted**

**Department**

Department of Human Services

**Agency**

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

**CCR number**

12 CCR 2509-4

**Rule title**

12 CCR 2509-4 CHILD WELFARE SERVICES 1 - eff 12/01/2018

**Effective date**

12/01/2018

#### **7.304.662 Core Services**

- A. Counties with a state-approved Core Service Program plan may directly provide or purchase Core Services Program.
- B. If a Core Service Program is purchased, all state rule requirements shall be followed.

\*\*\*\*\*

#### **7.304.52 Family Search and Engagement**

- A. Family search and engagement shall:
  - 1. Be commenced for the noncustodial parent within three (3) working days. The county department must provide notification to the absent parent of the following:
    - a. The child or youth has been removed from the home; and,
    - b. The option to participate in the care, treatment, or placement of the child or youth.
  - 2. Be completed within thirty (30) calendar days for all grandparent(s) and other adult relatives or the parent of a sibling of a child/youth who has been removed from his/her legal custodian's home. The latter shall not be construed as subordinating the rights of foster or adoptive parents of a child or youth to the rights of the parents of a sibling of the child or youth. The county department of human or social services shall provide notification of the following information:
    - a. The child or youth has been removed from the home;
    - b. Options to participate in the care or placement of the child or youth;
    - c. Options that may be lost by failing to respond to the notice;
    - d. The requirements to become a foster parent, and services and supports available to the child and/or youth placed in the family foster care home; and,
    - e. A description of the Relative Guardianship Assistance Program.

\*\*\*\*\*

#### **7.304.21 Kinship Care**

- D. Kinship care services when the county department has not assumed legal authority for placement or taken legal custody, the county department shall:
  - 6. Complete a background check for each adult (18 years and older) living in the home. These checks shall be completed prior to the child(ren)/youth's change in living arrangement and documented in the state automated case management system. The background check shall include:

b. Fingerprint-based criminal history record information checks from the Colorado Bureau of Investigation (CBI) and the Federal Bureau of Investigation (FBI) shall be conducted prior to placement unless it is an emergency placement (see Section 7.304.21, E, 2, f) in order to determine if any adult who resides in the home has been convicted (see Section 7.000.2 [12 CCR 2509-1]) of:

- 1) Child abuse, as specified in Section 18-6-401, C.R.S.;
- 2) A crime of violence, as defined in Section 18-1.3-406 (2)(a), C.R.S.;
- 3) An offense involving unlawful sexual behavior, as defined in Section 16- 22-102 (9), C.R.S.;
- 4) A felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in Section 18-6-800.3(1), C.R.S.;
- 5) A felony involving physical assault, battery, or a drug-related offense within five years of the date of application;
- 6) A pattern of misdemeanor convictions within the ten (10) years immediately preceding submission of the application. (see Section 7.000.2 [12 CCR 2509-1])
- 7) Any offense in any other state, the elements of which are substantially similar to the elements of any one of the offenses described in 1-6, above.

E. Kinship care services when the county department has assumed legal authority for placement or been granted legal custody:

2. Placement with Kinship Care Providers:

f. When an emergency placement is necessary and a prospective relative or other available person is identified, and child(ren)/youth are placed into temporary custody by law enforcement and/or the court places temporary custody with a county department of human or social services the following actions shall occur prior to placement of child(ren)/youth in the home:

- 3) Kin who is not disqualified as an emergency placement and who authorizes the child(ren)/youth to be placed in the home shall submit fingerprints no later than five (5) calendar days after the child(ren)/youth are placed in the home or no later than fifteen (15) calendar days when documented urgent circumstances exist. The cost of the fingerprints is the responsibility of the relative or other available person.
- 4) The county department shall confirm timely submission of fingerprints with kin whom the child/youth is placed with for an emergency placement.
- 5) In accordance with section 19-3-406 (2), C.R.S. if the kin fails to submit a complete set of fingerprints to the county department, the county department or the law enforcement officer, as appropriate, shall immediately remove the child from the physical custody of the person unless otherwise ordered by the court.



- 6) A fingerprint-based criminal history record information check will be conducted by CBI using state and national CBI and FBI records. The local law enforcement agency is the authorized agency to receive the results.
- 7) If the fingerprint-based criminal history record information check indicates the person has a disqualifying criminal history, the county department of human or social services or local law enforcement officer shall immediately remove the child(ren)/youth from the emergency placement and shall not place a child(ren)/youth with the person who has the criminal history without court involvement and an order of the court affirming placement of the child(ren)/youth with the person.
- 8) A county department of human or social services or local law enforcement shall not make an emergency placement or continue the emergency placement of a child(ren)/youth with a person who has been convicted of one or more of the following offenses:
  - a) Child abuse, as specified in Section 18-6-401, C.R.S.;
  - b) A crime of violence, as defined in Section 18 1.3 406(B)(I), C.R.S.;
  - c) An offense involving unlawful sexual behavior, as defined in Section 16-22-102(9), C.R.S.;
  - d) A felony, the underlying actual basis of which has been found by the court on the record to include an act of domestic violence, as defined in Section 18-6-800.3(1), C.R.S.;
  - e) A felony involving physical assault or a drug-related offense, committed within the preceding five years;
  - f) Violation of a protection order, as described in Section 18-6-803.5, C.R.S.;
  - g) A crime involving homicide; or,
  - h) An offense in any other state the elements of which are substantially similar to the elements of any one of the offenses described in a-g, above.
- 9) If a relative or other person was not disqualified as an emergency placement based upon the fingerprint-based criminal history record information check and the child(ren)/youth were placed in the emergency placement, the county department of human or social services shall complete the following checks for the relative or available person and all adults in the home:
  - a) Review the court case management system of the State Judicial Department and include a copy of the information in the case record;
  - b) Review the state automated case management system and the child abuse and/or neglect registries in all states the adults living in the home have resided in the five years preceding the date of application and include a copy of the information in the case record; and,
  - c) Review the CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice at initial placement, and annually, and include a copy of the information in the case record:
    - i) Known names and addresses of each adult residing in the home; and,

ii) Address only of the kinship home.

10) If information is found as a result of any checks of the relative or other available person that continued placement is unsafe, the county department of human or social services shall remove the child(ren)/youth.

11) If a disqualifying factor (refer to Section 7.002) and/or a concern about the safety of the child(ren)/youth is identified following the placement of the child(ren)/youth, the department of human or social services shall evaluate the appropriateness of continuing the placement. A plan shall be developed to address the concerns as soon as possible and the concerns shall be remedied no later than two weeks after the date of placement. The following shall be documented in the state automated case management system:

a) Review the circumstances of the placement;

b) Evaluate the vulnerability of the child(ren)/youth, including age and development;

c) Safety issues impacting the child(ren)/youth;

d) Supports needed by the non-certified kinship caregiver(s); and,

e) Identify alternative solutions to removal of the child(ren)/youth from the placement, and document the solution in the family service plan including, but not limited to, the family's current status in the following domains:

i) Risk and safety;

ii) Level of functioning;

iii) Strengths;

iv) Specific areas of concern to be addressed;

v) Services and supports needed; and,

vi) Changes that must occur to mitigate the concerns.

12) Fingerprint-based criminal history record information checks are not required if the relative or other available person in the home completed them within the three months preceding date of placement. The following checks shall be completed and included in the case record, and documented in the state automated case management system:

a) State automated case management system;

b) The CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice at initial placement and annually:

i) Known names and addresses of each adult residing in the home; and,

ii) Address only of the kinship home.

c) Court case management system of the State Judicial Department; and,

d) Contact law enforcement to determine if any additional criminal history occurred or complete an online CBI name-based check.

\*\*\*\*\*

- D. When protective issues are not significant, county departments may refer children with intellectual, physical, or emotional disabilities to community or home-based services. If homebased or community services are not sufficient or successful, the county department may offer voluntary out-of-home placements for children who meet the criteria. If voluntary out-of-home placements are not offered, the county department shall have a written policy stating that voluntary placements are not provided.

The county department shall ensure that a placement contract is signed before a voluntary placement is made. The county department shall:

1. File a Petition for Review of Need for Placement within 90 calendar days of placement, if the placement is expected to exceed 90 calendar days.
2. Ensure that the child's parents, guardian, and legal custodian are informed of the substance of the Petition for Review of Need for Placement.
3. File a review report with the court every six months, thereafter, or more frequently, when ordered by the court, until the placement is ended. When an Administrative Review conducted by the Administrative Review Division substitutes for a court review, a summary containing the same information as would be submitted to the court shall be completed and filed in the case record in accordance with 7.601.6, B. The county department shall submit this written summary with the Administrative Review findings to the court.

**CYNTHIA H. COFFMAN**  
Attorney General  
**MELANIE J. SNYDER**  
Chief Deputy Attorney General  
**LEORA JOSEPH**  
Chief of Staff  
**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000  
  
**Office of the Attorney General**

Tracking number: 2018-00377

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

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

**on 10/05/2018**

12 CCR 2509-4

**CHILD WELFARE SERVICES**

The above-referenced rules were submitted to this office on 10/12/2018 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 23, 2018 09:34:29

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General

## **Permanent Rules Adopted**

### **Department**

Department of Human Services

### **Agency**

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

### **CCR number**

12 CCR 2509-5

### **Rule title**

12 CCR 2509-5 RESOURCES, REIMBURSEMENT, REPORTING, AND PROVIDER  
REQUIREMENTS 1 - eff 12/01/2018

### **Effective date**

12/01/2018

<b>Title of Proposed Rule:</b>		<b>Technical Clean Up – Division of Child Welfare</b>
<b>CDHS Tracking #:</b>		<b>18-03-21-03</b>
Office, Division, & Program:	Rule Author:	Phone: 303.866.4617
OCYF, DCW	Jeannie Berzinskas	E-Mail: <a href="mailto:jeannie.berzinskas@state.co.us">jeannie.berzinskas@state.co.us</a>

# RULEMAKING PACKET

**Type of Rule:** (complete a and b, below)

a. ☒ Board ☐ Executive Director

b. ☒ Regular ☐ Emergency

**This package is submitted to State Board Administration as: (check all that apply)**

AG Initial  
Review

Initial Board  
Reading

AG 2<sup>nd</sup> Review

## Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

Number

X Amended Rules

## New Rules

X	Repealed Rules
---	----------------

---

Reviewed Rules

What month is being requested for this rule to first go before the State Board?	September 2018
What date is being requested for this rule to be effective?	December 1, 2018
Is this date legislatively required?	no

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

**Office Director Approval:** \_\_\_\_\_ **Date:** \_\_\_\_\_

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION	
Comments:	

Estimated Dates:	1st Board	September	2nd Board	October	Effective Date	December
------------------	-----------	-----------	-----------	---------	----------------	----------

<b>Title of Proposed Rule:</b>		<b>Technical Clean Up – Division of Child Welfare</b>
<b>CDHS Tracking #:</b>		<b>18-03-21-03</b>
Office, Division, & Program:	Rule Author:	Phone: 303.866.4617
OCYF, DCW	Jeannie Berzinskas	E-Mail: <a href="mailto:jeannie.berzinskas@state.co.us">jeannie.berzinskas@state.co.us</a>

## STATEMENT OF BASIS AND PURPOSE

**Summary of the basis and purpose for new rule or rule change.**

Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. **1500 Char max**

The rule change is necessary to provide technical clean-up to already existing rules.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

	to comply with state/federal law and/or
	to preserve public health, safety and welfare

Justification for emergency:

**State Board Authority for Rule:**

Code	Description
26-1-107, C.R.S. (2017)	State Board to promulgate rules
26-1-109, C.R.S. (2017)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2017)	State department to promulgate rules for public assistance and welfare activities.

**Program Authority for Rule:** Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.

Code	Description
26-1-111, C.R.S. (2017)	State department to promulgate rules for public assistance and welfare activities.

Does the rule incorporate material by reference?  
Does this rule repeat language found in statute?

	Yes	X	No
	Yes	X	No

If yes, please explain.

<b>Title of Proposed Rule:</b> <u>Technical Clean Up – Division of Child Welfare</u>		
<b>CDHS Tracking #:</b> <u>18-03-21-03</u>		
Office, Division, & Program: OCYF, DCW	Rule Author:	Phone: 303.866.4617
	Jeannie Berzinskas	E-Mail: <a href="mailto:jeannie.berzinskas@state.co.us">jeannie.berzinskas@state.co.us</a>

## **REGULATORY ANALYSIS**

### **1. List of groups impacted by this rule.**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

County departments will be impacted by this rule. They will benefit from the clarification provided in the technical clean up.

### **2. Describe the qualitative and quantitative impact.**

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

County child welfare staff will have clarity of practice regarding areas addressed in this rule packet.

### **3. Fiscal Impact**

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just “no impact” answer should include “no impact because....”***

State Fiscal Impact *(Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)*

There is no fiscal impact as this provides technical clean up and clarification to already existing rule.

County Fiscal Impact

There is no fiscal impact as this provides technical clean up and clarification to already existing rule.

Federal Fiscal Impact

There is no fiscal impact as this provides technical clean up and clarification to already existing rule.

Other Fiscal Impact *(such as providers, local governments, etc.)*

There is no fiscal impact as this provides technical clean up and clarification to already existing rule.

### **4. Data Description**

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

### **5. Alternatives to this Rule-making**

*Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. **Answer should NEVER be just “no alternative” answer should include “no alternative because...”***



<b>Title of Proposed Rule:</b> <u>Technical Clean Up – Division of Child Welfare</u>		
<b>CDHS Tracking #:</b> <u>18-03-21-03</u>		
Office, Division, & Program:	Rule Author:	Phone: 303.866.4617
OCYF, DCW	Jeannie Berzinskas	E-Mail:
		<a href="mailto:jeannie.berzinskas@state.co.us">jeannie.berzinskas@state.co.us</a>

The only alternative to this rule making is to leave the language as is. This will continue to cause confusion. The technical clean-up is needed to provide clarification.

**Title of Proposed Rule:** Technical Clean Up – Division of Child Welfare

**CDHS Tracking #:** 18-03-21-03

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Jeannie Berzinskas

Phone: 303.866.4617  
E-Mail:  
[jeannie.berzinskas@state.co.us](mailto:jeannie.berzinskas@state.co.us)

### OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Types of Changes:



New



Revision



Technical Change



Repeal

Rule section and Page #	Type of Change/Modification	Old Language	New Language or Response	Reason/Example/Best Practice	Public Comment None/Detail
7.407 (A) (3)	Technical Change	<p>A. Fiscal sanctions and disallowances occur as a result of Administrative Review findings of noncompliance in three areas:</p> <p>3. Requirements for state reimbursement at Section 7.406.2 are not met, to include:</p> <p>a. Out-of-home placements for a child in Colorado who is in the custody of another state. The county shall bill the other state for reimbursement.</p> <p>b. Receiving home or shelter care placements that exceed ninety (90) consecutive days.</p> <p>c. Out-of-home placements of children who do not meet the requirements of Section 7.304.51, "Authority for Placement".</p> <p>d. Out-of-home care in public child care institutions accommodating more than twenty-five (25) children.</p> <p>e. Placements of children under six (6) years of age in a specialized group facility, residential child care facility, or residential treatment center, except for children with documented exceptional needs which can be met only by the specifically identified facility. Documentation</p>	<p>3. Requirements for state reimbursement at Section 7.406.2 are not met.</p>	<p>The rule language was a restatement of the cross-reference and is no longer current. Language is being stricken to avoid duplication.</p>	<p>This is a technical clean-up and does not change already existing rule.</p>

**Title of Proposed Rule:** Technical Clean Up – Division of Child Welfare

**CDHS Tracking #:** 18-03-21-03

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Jeannie Berzinskas

Phone: 303.866.4617  
E-Mail:  
[jeannie.berzinskas@state.co.us](mailto:jeannie.berzinskas@state.co.us)

	<p>in the child's Family Services Plan shall include a description of the services available in that facility to address the child's specific needs.</p> <p>f. Placements of children under twelve (12) years of age in a specialized group facility, residential child care facility, or residential treatment center that exceed sixty (60) calendar days unless the child has documented special treatment needs that cannot be met in a foster care home. Documentation in the Family Services Plan shall include a description of the services available in that facility to address the child's specific needs.</p> <p>g. Placements in a specialized group home with a capacity in excess of ten (10) children unless there is written approval by the placing caseworker's supervisor. Such approval shall be based upon written documentation in the Family Services Plan that the child's needs can be met only by the specifically identified facility. The documentation shall include a description of the services available in that facility to address the child's needs.</p> <p>h. Services provided by residential child care facilities or child placement agencies which are reimbursable from other funding sources.</p> <p>i. For "child specific" or kinship foster care home placements exceeding ninety (90) calendar days in provisional status from the date of application.</p> <p>j. Placement of a child in a provisionally certified foster care home that is not fully certified within ninety (90) calendar days from</p>			
--	--	--	--	--

**Title of Proposed Rule:** Technical Clean Up – Division of Child Welfare

**CDHS Tracking #:** 18-03-21-03

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Jeannie Berzinskas

Phone: 303.866.4617

E-Mail:  
[jeannie.berzinskas@state.co.us](mailto:jeannie.berzinskas@state.co.us)

		the date of the application.			
--	--	------------------------------	--	--	--

**Title of Proposed Rule:** Technical Clean Up – Division of Child Welfare

**CDHS Tracking #:** 18-03-21-03

Office, Division, & Program:  
OCYF, DCW

Rule Author:  
Jeannie Berzinskas

Phone: 303.866.4617

E-Mail:

[jeannie.berzinskas@state.co.us](mailto:jeannie.berzinskas@state.co.us)

### **STAKEHOLDER COMMENT SUMMARY**

#### **Development**

*The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):*

--

#### **This Rule-Making Package**

*The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:*

--

#### **Other State Agencies**

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

☐

Yes

☐

No

If yes, who was contacted and what was their input?

--

#### **Sub-PAC**

Have these rules been reviewed by the appropriate Sub-PAC Committee?

☒

Yes

☐

No

Name of Sub-PAC

Child Welfare Sub-PAC

Date presented

April 2018

What issues were raised?

Vote Count

*For*

*Against*

*Abstain*

Unanimous

If not presented, explain why.

#### **PAC**

Have these rules been approved by PAC?

☒

Yes

☐

No

Date presented

May 2018

What issues were raised?

Vote Count

*For*

*Against*

*Abstain*

Unanimous

If not presented, explain why.

#### **Other Comments**

Comments were received from stakeholders on the proposed rules:

☐

Yes

☐

No

*If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.*

(12 CCR 2509-5)

**7.407 ADMINISTRATIVE REVIEW FINDINGS, FISCAL SANCTIONS, APPEALS, AND  
DISALLOWANCES [Rev. eff. 1/1/16]**

A. Fiscal sanctions and disallowances occur as a result of Administrative Review findings of noncompliance in three areas:

3. Requirements for state reimbursement at Section 7.406.2 are not met.

+++++

\*\*\*\*\* (BREAK BETWEEN SECTIONS)

[Note: Changes to rule text are identified as follows: deletions are shown as “~~strikethrough~~”, additions are in “All Caps”, and changes made between initial review and final adoption are in [brackets] or highlighted yellow]

**CYNTHIA H. COFFMAN**  
Attorney General

**MELANIE J. SNYDER**  
Chief Deputy Attorney General

**LEORA JOSEPH**  
Chief of Staff

**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000

**Office of the Attorney General**

Tracking number: 2018-00378

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

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

**on 10/05/2018**

12 CCR 2509-5

**RESOURCES, REIMBURSEMENT, REPORTING, AND PROVIDER REQUIREMENTS**

The above-referenced rules were submitted to this office on 10/11/2018 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 23, 2018 09:34:46

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General

## **Permanent Rules Adopted**

**Department**

Department of Human Services

**Agency**

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

**CCR number**

12 CCR 2509-9

**Rule title**

12 CCR 2509-9 EARLY CHILDHOOD 1 - eff 12/01/2018

**Effective date**

12/01/2018



## **12 CCR 2509-9**

### **7.812 PROCEDURES FOR GRANT APPLICATION**

#### **A. Grant Application Contents**

- 1.** All applications shall be submitted to the department by entities as defined in Section 7.811 in accordance with these rules and shall contain, at a minimum, the basic program elements specified in Section 26-6.4-106, C.R.S., and the following information. A budget which includes each of the following:

\*\*\*\*\*

### **7.821 REPORTING REQUIREMENTS FOR TOBACCO SETTLEMENT PROGRAMS**

- A.** All programs shall annually submit to the department a report which, at a minimum, includes the following information:
- 1.** The amount of tobacco settlement moneys received by the program for the preceding fiscal year;
  - 2.** A description of the program, including the program goals, population served by the program, the actual number of people served, and the services provided; and,
  - 3.** An evaluation of the operation of the program, which includes the effectiveness of the program in achieving its stated goals.
- B.** Annual program reports shall be submitted in accordance with statutory requirements for master tobacco settlement agreement funding.

**CYNTHIA H. COFFMAN**  
Attorney General  
**MELANIE J. SNYDER**  
Chief Deputy Attorney General  
**LEORA JOSEPH**  
Chief of Staff  
**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000  
  
**Office of the Attorney General**

Tracking number: 2018-00379

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

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

**on 10/05/2018**

12 CCR 2509-9

**EARLY CHILDHOOD**

The above-referenced rules were submitted to this office on 10/12/2018 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 23, 2018 09:35:03

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General

## **Emergency Rules Adopted**

**Department**

Department of State

**Agency**

Secretary of State

**CCR number**

8 CCR 1505-6

**Rule title**

8 CCR 1505-6 RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE 1 - eff  
10/11/2018

**Effective date**

10/11/2018

**COLORADO SECRETARY OF STATE**

**8 CCR 1505-6**

**Rules Concerning Campaign and Political Finance**

**Rules as Adopted – Clean  
October 11, 2018**

*(Italic blue font text indicate publication notes and annotations)*

*[Current 8 CCR 1505-6 is amended as follows:]*

**Rule 18. Penalties, Violations, and Complaints**

**18.2 Complaints.**

18.2.1 Any person who believes that a violation of Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, or the Secretary of State's rules concerning campaign and political finance has occurred may file a complaint with the Secretary of State.

18.2.2 Complaints must be filed no later than 90 days after the complainant knew or should have known by the exercise of reasonable diligence of the alleged violation.

18.2.3 Complaints must be filed in writing and signed by the complainant on the form provided by the Secretary of State. The complaint must identify the respondent or respondents and the complainant must provide the information required on the form.

18.2.4 Upon receipt of a complaint, the Secretary of State's elections division must notify the respondent of the complaint by email, or by mail if email is unavailable.

18.2.5 Complaints made against any candidate for Secretary of State will be forwarded to the attorney general's office for review in accordance with this Rule 18.2.

**18.2.6 Initial review**

(a) The elections division will review the complaint to determine:

- (1) Whether the complaint was timely filed under Rule 18.2.2,
- (2) Whether the complainant has specifically identified one or more violations of Colorado Constitution Article XXVIII, the Fair Campaign Practices Act, or the Secretary of State's rules concerning campaign and political finance, and
- (3) Whether the complainant has alleged sufficient facts to support a legal and factual basis for the complaint.

- (b) Within 10 business days of receiving the complaint, the elections division must take one or more of the following actions:
  - (1) If the elections division determines that the complaint was not timely filed, has not specifically identified one or more violations, or that the complainant did not assert facts sufficient to support the alleged violations, the elections division will dismiss the complaint and notify the complainant and respondent of the reasons for dismissal. The dismissal is a final agency action, and subject to review under section 24-4-106, C.R.S.
  - (2) If the elections division determines that the complaint alleges one or more curable violations as described in Rule 18.2.7, the elections division will notify the respondent and provide an opportunity to cure.
  - (3) If the elections division determines that the complaint alleges one or more violations that require a factual finding or legal interpretation, the elections division will conduct additional review under Rule 18.2.8 to determine whether to file a complaint with a hearing officer.

#### 18.2.7 Curing violations

- (a) Upon the election division's determination that a complaint alleges a failure to file or otherwise disclose required information, or other curable violation, the elections division will notify the respondent by email, or by mail if email is unavailable, of the curable deficiencies alleged in the complaint.
- (b) The respondent has 10 business days from the date the notice is mailed to file an amendment to the relevant report or reports that cures any deficiencies specified in the notice.
- (c) The respondent must provide the elections division with notice of its intent to cure on the form provided by the Secretary of State and include a copy of any amendments.
- (d) The elections division may ask the respondent to provide additional information, and may grant an extension of time to file a notice of intent to cure in order to respond to such a request.
- (e) After the period for cure, the elections division will determine whether the respondent cured the violations, and if so, whether the respondent substantially complied or acted in good faith under Rules 18.2.7(f) and 18.2.7(g).
  - (1) If the elections division determines that the respondent substantially complied or acted in good faith, the elections division will dismiss the complaint.

- (2) If the elections division determines that the respondent neither substantially complied nor acted in good faith, the elections division will conduct additional review under Rule 18.2.6 to determine whether to file the complaint with a hearing officer.
  - (3) The election division's determination under this subsection is a final agency action, subject to review under section 24-4-106, C.R.S.
- (f) In determining whether an entity substantially complied as that term is used in Rule 18.2.7, the elections division must consider:
  - (1) The extent of the respondent's noncompliance;
  - (2) The purpose of the provision violated and whether that purpose was substantially achieved despite the noncompliance; and
  - (3) Whether the noncompliance can properly be viewed as an intentional attempt to mislead the electorate or election officials.
- (g) In determining whether an entity registered or disclosed in "Good faith" as that term is used in Rule 18.2.7, the elections division may consider whether ten percent or less of either the entity's disclosures or, alternatively, the reported dollar amounts required on the report or appearing on the filed reports at issue in the complaint are out of compliance.
- (h) If the elections division determines that respondent failed to cure any alleged deficiency, the elections division will conduct additional review under Rule 18.2.8 to determine whether to file the complaint with a hearing officer.

#### 18.2.8 Investigation and enforcement

- (a) The elections division must investigate each unresolved or uncured complaint to determine whether to file a complaint with the hearing officer described in Rule 18.2.9(b).
  - (1) If the elections division determines that it will not file a complaint with a hearing officer because there is not sufficient information to support the allegations or for any other reason, it must dismiss the complaint within 30 days of the election division's initial determination under Rule 18.2.6(b).
  - (2) If the elections division files a complaint with a hearing officer, it must send notice, including a copy of the filing, by certified mail, return receipt requested, to the complainant and the respondent within one business day of referral.
- (b) If the elections division files a complaint with a hearing officer under this rule, it is responsible for conducting such discovery as may be necessary

for effectively prosecuting the complaint, supplementing or amending the complaint with such additional or alternate allegations as may be justified by the evidence, amending the complaint to strike allegations that are not justified by the evidence, and in all other respects, prosecuting the complaint.

- (c) The complainant or any other non-respondent is not a party to the review, except that a complainant may seek permission from the hearing officer to file written legal arguments or factual documentation, or both, as a friend-of-the-court. A person's status as a complainant is not sufficient to establish that he or she may be affected or aggrieved by the Secretary's action on the complaint. A complainant may also seek review of a final agency action under Rules 18.2.6(b)(1) and 18.2.9(c) under section 24-4-106, C.R.S.
- (d) If the election division fails to file a complaint with the hearing officer within 30 days as outlined in Rule 18.2.8(a)(1), the complaint is deemed dismissed under Rule 18.2.6(b)(1).

#### 18.2.9 Hearings

- (a) The hearing officer must be an individual authorized under section 24-4-105(3), C.R.S.
- (b) Hearings conducted by a hearing officer under Rule 18.2 must be in accordance with the provisions of section 24-4-105, C.R.S., except that a hearing officer must hold a hearing within 15 business days of the filing of the complaint, and must make a determination within 15 days of the hearing. The respondent must be granted an extension of up to 30 days upon respondent's motion, or longer upon a showing of good cause.
- (c) Determinations made by the hearing officer must be made under section 24-4-105, C.R.S., and are subject to review under section 24-4-106, C.R.S.

18.2.10 Any person seeking guidance on the application of Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, or the Secretary of State's rules concerning campaign and political finance may request that the Secretary of State issue an advisory opinion regarding their specific activities.

- (a) The Secretary of State will determine, at his or her discretion, whether to issue an advisory opinion. In making the determination, the Secretary will consider:
  - (1) Whether the advisory opinion will terminate a controversy or remove uncertainties as to the application of the requestor of any law;
  - (2) Whether the request involves a subject, question, or issue that concerns a formal or informal matter or investigation currently pending before the Secretary of State or a court; and

(3) Whether the request seeks a ruling on a moot or hypothetical question.

(b) A person may rely on the Secretary of State's advisory opinion as an affirmative defense to any complaint filed under this Rule.

18.2.11 The elections division will make documents related to a complaint publicly available as follows:

(a) The original complaint, notice of initial review, final agency decision, and any complaint filed by the elections division with a hearing officer will be publicly available at the time the elections division provides the document to the respondent.

(b) Any additional documentation related to the complaint, including a notice of intent to cure and supporting evidence, or documents related to the elections division's investigation, will be publicly available at the time the elections division issues a final agency decision or files a complaint with a hearing officer.

(c) The elections division may redact any document related to a complaint if it is necessary to protect any person's private or confidential information.

18.2.12 The Office of Administrative Courts must remand back to the Secretary of State all pending complaints that were filed with the Secretary of State before June 19, 2018. Those complaints may be re-filed under this Rule 18.2 within 180 days of remand, even if the alleged violations fall outside the period for filing set forth in Rule 18.2.2.





## **Statement of Justification and Reasons for Adoption of Temporary Rules**

### **Office of the Secretary of State Rules Concerning Campaign and Political Finance 8 CCR 1505-6**

**October 11, 2018**

Amendments to temporary Rule 18.2 (initially adopted under CCR Tracking #2018-00275 on June 19, 2018). Includes New Rules: 18.2.4, 18.2.5, 18.2.6(a)(1), 18.2.7(d), 18.2.7(e)(1) and (2), Rule 18.2.10(a)(1)-(3), and Rule 18.2.11.

In accordance with Colorado campaign and political finance laws,<sup>1</sup> the Secretary of State finds that certain amendments to the existing campaign and political finance rules must be adopted and effective immediately to ensure the uniform and proper administration and enforcement of Colorado campaign and political finance laws during the 2018 election cycle. Temporary adoption is necessary both to comply with law and to preserve the public welfare generally. This New Rule 18.2 will replace the temporary rule adopted on June 19, 2018. The Secretary simultaneously adopts the rule on a permanent basis under CCR #2018-00402.

In *Holland v. Williams*<sup>2</sup>, a private citizen challenged the constitutionality of Colorado's campaign finance private enforcement system on First and Fourteenth Amendment grounds. On June 12, 2018, the U.S. District Court held that section 9(2)(a) of Article XXVIII of the Colorado Constitution [the private enforcement system] was facially unconstitutional.

Amendments to Rule 18.2 are consistent with the U.S. District Court's holding, and are necessary to ensure that Colorado's campaign finance laws continue to be enforced in a uniform manner.

For these reasons, and in accordance with the State Administrative Procedure Act, the Secretary of State finds that adoption and immediate effect of the amendments to existing campaign and political finance rules is imperatively necessary to comply with state and federal law and to promote public interests.<sup>3</sup>

---

<sup>1</sup> Article XXVIII, Section 9(1)(b), of the Colorado Constitution and section 1-45-111.5(1), C.R.S. (2018).

<sup>2</sup> *Holland v. Williams*, 16-cv-00138 (June 12, 2018).

<sup>3</sup> Section 24-4-103(3)(6), C.R.S. (2018).

**CYNTHIA H. COFFMAN**  
Attorney General  
**MELANIE J. SNYDER**  
Chief Deputy Attorney General  
**LEORA JOSEPH**  
Chief of Staff  
**FREDERICK R. YARGER**  
Solicitor General



**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**RALPH L. CARR**  
**COLORADO JUDICIAL CENTER**  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000  
  
**Office of the Attorney General**

Tracking number: 2018-00554

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

Secretary of State

**on 10/11/2018**

8 CCR 1505-6

**RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE**

The above-referenced rules were submitted to this office on 10/11/2018 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 30, 2018 12:21:42

**Cynthia H. Coffman**  
Attorney General  
by Frederick R. Yarger  
Solicitor General

## Terminated Rulemaking

**Department**

Department of Revenue

**Agency**

Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-4

**Tracking number**

2018-00521

**Termination date**

10/26/2018

**Reason for termination**

Due to a technicality in the filing of the Notice of Proposed Rulemaking, the Department will be refiling the notice for the regulations referenced below. Because of the statutory requirements of the Administrative Procedures Act, refiling the rules will require rescheduling the October 30 rulemaking hearing.

## Terminated Rulemaking

**Department**

Department of Revenue

**Agency**

Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-4

**Tracking number**

2018-00522

**Termination date**

10/26/2018

**Reason for termination**

Due to a technicality in the filing of the Notice of Proposed Rulemaking, the Department will be refiling the notice for the regulations referenced below. Because of the statutory requirements of the Administrative Procedures Act, refiling the rules will require rescheduling the October 30 rulemaking hearing.

## Terminated Rulemaking

**Department**

Department of Revenue

**Agency**

Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-4

**Tracking number**

2018-00523

**Termination date**

10/26/2018

**Reason for termination**

Due to a technicality in the filing of the Notice of Proposed Rulemaking, the Department will be refiling the notice for the regulations referenced below. Because of the statutory requirements of the Administrative Procedures Act, refiling the rules will require rescheduling the October 30 rulemaking hearing.

## Terminated Rulemaking

**Department**

Department of Revenue

**Agency**

Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-4

**Tracking number**

2018-00525

**Termination date**

10/26/2018

**Reason for termination**

Due to a technicality in the filing of the Notice of Proposed Rulemaking, the Department will be refiling the notice for the regulations referenced below. Because of the statutory requirements of the Administrative Procedures Act, refiling the rules will require rescheduling the October 30 rulemaking hearing.

## Terminated Rulemaking

**Department**

Department of Revenue

**Agency**

Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-4

**Tracking number**

2018-00526

**Termination date**

10/26/2018

**Reason for termination**

Due to a technicality in the filing of the Notice of Proposed Rulemaking, the Department will be refiling the notice for the regulations referenced below. Because of the statutory requirements of the Administrative Procedures Act, refiling the rules will require rescheduling the October 30 rulemaking hearing.

## **Terminated Rulemaking**

**Department**

Department of Revenue

**Agency**

Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-4

**Tracking number**

2018-00527

**Termination date**

10/26/2018

**Reason for termination**

Due to a technicality in the filing of the Notice of Proposed Rulemaking, the Department will be refiling the notice for the regulations referenced below. Because of the statutory requirements of the Administrative Procedures Act, refiling the rules will require rescheduling the October 30 rulemaking hearing.



## Terminated Rulemaking

**Department**

Department of Revenue

**Agency**

Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-4

**Tracking number**

2018-00528

**Termination date**

10/26/2018

**Reason for termination**

Due to a technicality in the filing of the Notice of Proposed Rulemaking, the Department will be refiling the notice for the regulations referenced below. Because of the statutory requirements of the Administrative Procedures Act, refiling the rules will require rescheduling the October 30 rulemaking hearing.

## Terminated Rulemaking

**Department**

Department of Revenue

**Agency**

Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-4

**Tracking number**

2018-00530

**Termination date**

10/26/2018

**Reason for termination**

Due to a technicality in the filing of the Notice of Proposed Rulemaking, the Department will be refiling the notice for the regulations referenced below. Because of the statutory requirements of the Administrative Procedures Act, refiling the rules will require rescheduling the October 30 rulemaking hearing.

## **Terminated Rulemaking**

**Department**

Department of Revenue

**Agency**

Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-4

**Tracking number**

2018-00529

**Termination date**

10/26/2018

**Reason for termination**

Due to a technicality in the filing of the Notice of Proposed Rulemaking, the Department will be refiling the notice for the regulations referenced below. Because of the statutory requirements of the Administrative Procedures Act, refiling the rules will require rescheduling the October 30 rulemaking hearing.

## **Terminated Rulemaking**

**Department**

Department of Revenue

**Agency**

Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-13

**Tracking number**

2018-00531

**Termination date**

10/26/2018

**Reason for termination**

Due to a technicality in the filing of the Notice of Proposed Rulemaking, the Department will be refiling the notice for the regulations referenced below. Because of the statutory requirements of the Administrative Procedures Act, refiling the rules will require rescheduling the October 30 rulemaking hearing.

## **Terminated Rulemaking**

**Department**

Department of Revenue

**Agency**

Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-13

**Tracking number**

2018-00532

**Termination date**

10/26/2018

**Reason for termination**

Due to a technicality in the filing of the Notice of Proposed Rulemaking, the Department will be refiling the notice for the regulations referenced below. Because of the statutory requirements of the Administrative Procedures Act, refiling the rules will require rescheduling the October 30 rulemaking hearing.

## **Terminated Rulemaking**

**Department**

Department of Revenue

**Agency**

Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-13

**Tracking number**

2018-00535

**Termination date**

10/26/2018

**Reason for termination**

Due to a technicality in the filing of the Notice of Proposed Rulemaking, the Department will be refiling the notice for the regulations referenced below. Because of the statutory requirements of the Administrative Procedures Act, refiling the rules will require rescheduling the October 30 rulemaking hearing.

## Terminated Rulemaking

**Department**

Department of Revenue

**Agency**

Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-13

**Tracking number**

2018-00533

**Termination date**

10/26/2018

**Reason for termination**

Due to a technicality in the filing of the Notice of Proposed Rulemaking, the Department will be refiling the notice for the regulations referenced below. Because of the statutory requirements of the Administrative Procedures Act, refiling the rules will require rescheduling the October 30 rulemaking hearing.

## Terminated Rulemaking

**Department**

Department of Revenue

**Agency**

Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-13

**Tracking number**

2018-00536

**Termination date**

10/26/2018

**Reason for termination**

Due to a technicality in the filing of the Notice of Proposed Rulemaking, the Department will be refiling the notice for the regulations referenced below. Because of the statutory requirements of the Administrative Procedures Act, refiling the rules will require rescheduling the October 30 rulemaking hearing.



## Terminated Rulemaking

**Department**

Department of Revenue

**Agency**

Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-13

**Tracking number**

2018-00534

**Termination date**

10/26/2018

**Reason for termination**

Due to a technicality in the filing of the Notice of Proposed Rulemaking, the Department will be refiling the notice for the regulations referenced below. Because of the statutory requirements of the Administrative Procedures Act, refiling the rules will require rescheduling the October 30 rulemaking hearing.

## Terminated Rulemaking

**Department**

Department of Revenue

**Agency**

Taxpayer Service Division - Tax Group

**CCR number**

1 CCR 201-14

**Tracking number**

2018-00537

**Termination date**

10/26/2018

**Reason for termination**

Due to a technicality in the filing of the Notice of Proposed Rulemaking, the Department will be refiling the notice for the regulations referenced below. Because of the statutory requirements of the Administrative Procedures Act, refiling the rules will require rescheduling the October 30 rulemaking hearing.

## **Terminated Rulemaking**

**Department**

Department of Personnel and Administration

**Agency**

State Personnel Board and State Personnel Director

**CCR number**

4 CCR 801-1

**Tracking number**

2018-00499

**Termination date**

10/25/2018

**Reason for termination**

Deployment of HRWorks will not coincide with proposed effective date of this rulemaking

## **Departmental Regulatory Agendas**

### **Department**

Department of Local Affairs

# 2019

## Regulatory Agenda



**COLORADO**

**Department of Local Affairs**

## Overview

The Colorado Department of Local Affairs (DOLA) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in Colo. Rev. Stat. §2-7-203(4). Pursuant to state law, annually on November 1 executive-branch agencies must file a Departmental Regulatory Agenda (DRA) containing:

- A list of new rules or amendments that the department or its divisions expect to propose in the next calendar year;
- The statutory or other basis for adoption of the proposed rules;
- The purpose of the proposed rules;
- The contemplated schedule for adoption of the rules;
- An identification and listing of persons or parties that may be affected positively or negatively by the rules; and
- A list and brief summary of all permanent and temporary rules adopted since the previous DRA was filed.

The Regulatory Agenda also includes, pursuant to Colo. Rev. Stat. §24-4-103.3, rules to be reviewed as part of the Department's "Regulatory Efficiencies Reviews" during 2019 (which are denoted as such in the "purpose" column). The DRA is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on the department's web site, and submitted to the Secretary of State for publication in the Colorado Register. Each department must also present its DRA as part of its "SMART Act" hearing and presentation pursuant to Colo. Rev. Stat. §2-7-203(2)(a)(II).

The following constitutes DOLA's Regulatory Agenda for 2019 and is provided in accordance with Colo. Rev. Stat. §2-7-203(4):

Schedule (Month, Year)	Rule Number and Title	Division/ Board/ Program	New rule or revision?	Statutory or other basis for adoption of rule	Part of Mandatory Rule Review? (X if yes)	Purpose	Stakeholders <i>Recommend including proposed stakeholder outreach</i>	Anticipated Hearing Date
March 2019	Resolution #23 - Limits for Revolving Loan Program	Division of Housing - Housing Development Section	Revision	C.R.S. 24-32-717		Repeal a rule that is duplicative of statutory language	Affordable housing developers. We will use the Division's quarterly electronic newsletter to reach stakeholders.	Jan 8, 2019
July 2019	8 CCR 1302-14 Administrative Rules: Non- residential and Residential Factory-built Structures; Sellers of	Division of Housing - Building Codes & Standards Section	Revision	C.R.S. 24-32- 3305(1)		Cleanup errors in rules and review for additional opportunities to create efficiencies and effectiveness in this industry after massive effort in	Manufacturers (residential and non- residential), sellers, installers, 3 <sup>rd</sup> party inspectors, consumers, local building departments	May 14, 2019

	Manufactured Homes; Manufactured Home Installations; and Hotels, Motels, and Multi-Family Dwellings in those areas of the State where no Standards Exist					2017/2018 to consolidate five separate “resolutions” under one set of rules.		

The Department has very few regulatory rules. As a result, all Divisions within the Department annually complete and internal review of all rules. Each Division maintains a statement on its website that comments to any rule will be accepted on an on-going basis.

## **Departmental Regulatory Agendas**

### **Department**

Department of Treasury



State of Colorado  
Department of the Treasury

Walker R. Stapleton  
State Treasurer



Sandy Tan  
Deputy Treasurer

November 1, 2018

To whom it may concern,

The Department of the Treasury has no immediate regulatory agenda for the fiscal year ending June 30, 2019.

If you have any questions, comments or need additional information please do not hesitate to contact the State Treasurer's Office at 303-866-2441 or by email at [sandy.tan@state.co.us](mailto:sandy.tan@state.co.us) or [erin.gallegos@state.co.us](mailto:erin.gallegos@state.co.us).

Sincerely,

A handwritten signature in blue ink that reads "Sandy Tan".

Sandy Tan  
Colorado Deputy Treasurer

## **Departmental Regulatory Agendas**

### **Department**

Department of Public Safety

# 2019

## Regulatory Agenda

January 1, 2019 – December 31, 2019



# COLORADO

## Department of Public Safety

## Overview

The Colorado Department of Public Safety submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in Colo. Rev. Stat. §2-7-203(4). Pursuant to state law, annually on November 1 executive-branch agencies must file a Departmental Regulatory Agenda (DRA) containing:

- A list of new rules or amendments that the department or its divisions expect to propose in the next calendar year;
- The statutory or other basis for adoption of the proposed rules;
- The purpose of the proposed rules;
- The contemplated schedule for adoption of the rules;
- An identification and listing of persons or parties that may be affected positively or negatively by the rules; and

The Regulatory Agenda also includes, pursuant to Colo. Rev. Stat. §24-4-103.3, rules to be reviewed as part of the Department’s “Regulatory Efficiencies Reviews” during 2019 (which are denoted as such in the “purpose” column). The DRA is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on the department’s web site, and submitted to the Secretary of State for publication in the Colorado Register. Each department must also present its DRA as part of its “SMART Act” hearing and presentation pursuant to Colo. Rev. Stat. §2-7-203(2)(a)(II).

The following constitutes the Department’s Regulatory Agenda for 2018-2019 and is provided in accordance with Colo. Rev. Stat. §24-7-203(4):

Schedule	Rule Number	Rule Title	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders <i>Consider including high-level outreach bullets</i>
Anticipated Hearing or Adoption Date						
<b>Colorado Auto Theft Prevention Task Force</b>						
Fall 2019	8 CCR 1507-50	Colorado Automobile Theft Prevention Authority	Regulatory Efficiency Review	42-5-112, CRS	Provide basic guidance on the grant process to assist in the statewide reduction of auto theft	<ul style="list-style-type: none"> <li>• Law enforcement agencies</li> <li>• Units of local government</li> <li>• Insurance Companies licensed to insure motor vehicles</li> <li>• Nonprofit or for profit organizations addressing some aspect of motor vehicle theft prevention</li> </ul>

Schedule	Rule Number	Rule Title	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders <i>Consider including high-level outreach bullets</i>
<b>Colorado Bureau of Investigation</b>						
Hearing July, 2019	8 CCR 1507-33	Rules and Regulations Concerning the Medina Alert Program	Regulatory Efficiency Review	24-33.5-416.7(4), CRS	Administration of the Medina Alert program	<ul style="list-style-type: none"> <li>Local law enforcement agencies</li> <li>Designated broadcasters</li> <li>The general public at large</li> </ul>
<b>Colorado State Patrol</b>						
Tentative hearing January, 2019	8 CCR 1507-1	Minimum Standards for the Operation of Commercial Vehicles	Revision	42-4-235(4)(a), CRS	Support the safe operation of commercial vehicles and to adopt standards related to the regulation, inspection and operation of commercial vehicles within the State of Colorado	<ul style="list-style-type: none"> <li>Commercial motor carriers and operators</li> <li>Governmental subdivisions, entities or legal entities based in Colorado who operate commercial vehicles in the course of their business operations</li> </ul>
Tentative hearing January, 2019	8 CCR 1507-22	Claims for Reimbursement for the Costs of Response and Mitigation of Hazardous Substance Incidents	Revision	29-22-104(6), CRS	Establish the process by which a public entity, political subdivision of the state, or unit of local government may claim reimbursement for costs attributed to a hazardous substance incident	<ul style="list-style-type: none"> <li>Public entities</li> <li>Political subdivisions of the state</li> <li>Units of local government</li> </ul>
Tentative hearing	8 CCR 1507-25	Permitting, Routing, and	Revision	42-20-108(1), (2) 42-20-203	Provide guidance regarding the	<ul style="list-style-type: none"> <li>Public and private sector hazardous materials transporters and responders</li> </ul>

Schedule	Rule Number	Rule Title	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders <i>Consider including high-level outreach bullets</i>
January, 2019		Transportation of Hazardous and Nuclear Materials and the Intrastate Transportation of Agricultural Products in Colorado		42-20-504 42-20-508 and 42-20-108.5, CRS	permitting, routing and safe transportation of hazardous and nuclear materials by motor vehicles within the State of Colorado	
Tentative hearing January, 2019	8 CCR 1507-28	Port of Entry Rules for Commercial Vehicle Motor Carrier Size, Weight and Clearance	Revision	42-8-104, CRS	Set forth the size and weight limits, clearance and permitting requirements, and to define port operations as they apply to the operation of commercial motor vehicles in the State of Colorado	<ul style="list-style-type: none"> <li>• Colorado Department of Transportation</li> <li>• Colorado Department of Revenue</li> <li>• Federal Highway Authority</li> <li>• Federal Motor Carrier Safety Administration (FMCSA)</li> <li>• Colorado Motor Carriers Association (CMCA)</li> <li>• Commercial motor vehicle operators and businesses that operate commercial motor vehicles</li> </ul>
<b>Division of Fire Prevention and Control</b>						
Spring 2019	8 CCR 1507-11	Fire Suppression Program	Revision	24-33.5-1204.5, CRS	Ensure that life safety systems installed in commercial and residential occupancies are installed and maintained properly, according to nationally	<ul style="list-style-type: none"> <li>• Private sector installers of suppression systems</li> <li>• Municipalities and counties</li> </ul>

Schedule	Rule Number	Rule Title	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders <i>Consider including high-level outreach bullets</i>
					recognized standards	
Spring 2019	8 CCR 1507-12	Persons Dealing with Fireworks	Revision	24-33.5-2004(7), CRS	Establish minimum requirements and standards for licenses to sell, store, or use fireworks	<ul style="list-style-type: none"> <li>• People who sell, purchase, store or use fireworks</li> <li>• Municipalities and counties</li> </ul>
Spring 2019	8 CCR 1507-30	Fire Code Enforcement and Certification of Inspectors for Public Schools, Charter Schools, and Junior Colleges	Regulatory Efficiency Review	24-33.5-1203.5, CRS	Establish uniform standards and minimum requirements for the construction, inspection, and maintenance of public school buildings and structures	<ul style="list-style-type: none"> <li>• Private sector contractors</li> <li>• Municipalities and counties</li> </ul>
Spring 2019	8 CCR 1507-31	Building, Fire, and Life Safety Code Enforcement and Certification of Inspectors for Health Facilities Licensed by the State of Colorado	Revision	24-33.5-1201, 24-33.5-1203, 24-33.5-1204.5, and 24-33.5-1206, CRS	Establish uniform standards and minimum requirements for the building, fire and life safety of health facilities	<ul style="list-style-type: none"> <li>• Private sector contractors</li> <li>• Municipalities and counties</li> </ul>
Fall 2019	8 CCR 1507-34	Local Firefighter Safety and Disease Prevention Fund	Regulatory Efficiency Review	24-33.5-1231, CRS	Govern applications and funding awards associated with the Colorado	<ul style="list-style-type: none"> <li>• Municipalities and counties</li> </ul>

Schedule	Rule Number	Rule Title	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders <i>Consider including high-level outreach bullets</i>
Anticipated Hearing or Adoption Date					Firefighter Safety and Disease Prevention Fund	
<b>Division of Homeland Security and Emergency Management</b>						
Summer 2019	8 CCR 1507-40	Continuity of State Government Operations	Regulatory Efficiency Review	24-33.5-1609, CRS	Provide guidance to state departments and agencies in developing viable and executable contingency plans for continuity of operations	<ul style="list-style-type: none"> <li>State government departments and agencies</li> </ul>
Summer 2019	8 CCR 1507-41	Building Security and Occupant Protection	Regulatory Efficiency Review	24-33.5-1608, CRS	Protect state personnel and property owned or leased by the state, including, but not limited to, facilities, buildings, and grounds	<ul style="list-style-type: none"> <li>State government departments and agencies</li> <li>State government employees</li> <li>General public</li> </ul>
These rules will be repealed at the same time as section 24-33.5-1616, CRS, as amended, is repealed.	8 CCR 1507-43	Reserve Peace Officer Academy Grant Program	Repeal	24-33.5-1616, CRS	Provide a grant to a political subdivision of the state that is comprised of multiple jurisdictions for the purpose of creating a reserve peace officer training academy that will train and	<ul style="list-style-type: none"> <li>Reserve peace officer training academies</li> <li>Grant recipients</li> <li>Potential grant applicants</li> </ul>



Schedule						
Anticipated Hearing or Adoption Date	Rule Number	Rule Title	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders <i>Consider including high-level outreach bullets</i>
Effective July 1, 2019					certify a reserve peace officer auxiliary group.	

## **Departmental Regulatory Agendas**

### **Department**

Department of Regulatory Agencies

# 2019

## Regulatory Agenda



## Overview

The Colorado Department of Regulatory Agencies submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in Colo. Rev. Stat. §2-7-203(4). Pursuant to state law, annually on November 1 executive-branch agencies must file a Departmental Regulatory Agenda (DRA) containing:

- A list of new rules or amendments that the department or its divisions expect to propose in the next calendar year;
- The statutory or other basis for adoption of the proposed rules;
- The purpose of the proposed rules;
- The contemplated schedule for adoption of the rules;
- An identification and listing of persons or parties that may be affected positively or negatively by the rules; and
- A list and brief summary of all permanent and temporary rules adopted since the previous DRA was filed.

The Regulatory Agenda also includes, pursuant to Colo. Rev. Stat. §24-4-103.3, rules to be reviewed as part of the Department’s “Regulatory Efficiencies Reviews” during 2019 (which are denoted as such in the “purpose” column). The DRA is to be filed with the Legislative Council staff for distribution to committee(s) of reference, posted on the department’s web site, and submitted to the Secretary of State for publication in the Colorado Register. Each department must also present its DRA as part of its “SMART Act” hearing and presentation pursuant to Colo. Rev. Stat. §2-7-203(2)(a)(II).

The following constitutes DORA’s Regulatory Agenda for 2018-2019 and is provided in accordance with Colo. Rev. Stat. §2-7-203(4):

Ref #	Div.	Anticipated Hearing or Adoption Date	Rule Number	Rule Title	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
1	BAN	April 18, 2019	3 CCR 701-7 Money Transmitter Rules (all)	Money Transmitter Rules	Revision	11-102-104 (b)	Rule Cleanup	Money transmitter companies; Banking Associations

2	BAN	June 20, 2019	3 CCR 701-4 PDPA1; PDPA5	Public Deposit Protection Act (PDPA)	Revision	11-102-104 (a)	Rule Cleanup	PDPA financial institutions
3	DCO	Nov., 2018	New	Holder Certification: Conservation easements	New	12-61-1104	establish minimum cert holder quals to allow for renewal & one expected new cert application	The Division will work with the cert holder community
4	DCO	Nov., 2018	New	Fast-track certification: Conservation Easements	New	12-61-1104(7)(a)	fast-track certification for nationally-accredited organizations	The Division will work with the cert holder community
5	DCO	Nov., 2018	New	two tiers of conservation easement holders	New	12-61-1104(7)(b)	streamlined & lower-cost process for certain easement holders	The Division will work with the cert holder community
6	DCO	Nov., 2018	New	Best practices: Conservation Easements	New	12-61-1104(7)(d)	adopt best practices used by other entities that regularly review conservation easement transactions	The Division will work with the certification holder community and other entities that regularly review transactions
7	FIN	July 12, 2019	Rule 3 CCR 703-2	Life Care Institutions	Revision	CRS 11-49-108 (2)(g)	An opportunity exists to update Colorado's Life Care statute to provide for a surety bond, in addition to other cash or liquid reserves, which would maintain the current level of financial security for Colorado seniors as well as provide for more flexibility to our regulated Life Care Institutions to manage cash flow.	The Division of Financial Services will work with the following stakeholders: 1) Regulated Life Care Institutions 2) LeadingAge Colorado

8	DOI	March, 2019	Rule 1-1-3	1-1-3 - Concerning Rules Governing the Filing of Declaratory Judgment Petitions with the Colorado Insurance Commissioner	Revision	§§ 10-1-109, and 24-4-105(11), C.R.S.	This regulation contains the requirements for the submission of, and ruling on, petitions for declaratory orders by the Commissioner of Insurance.	All entities regulated by the Division
9	DOI	March, 2019	Rule 1-2-1	1-2-1 - Concerning Agent Fiduciary Responsibilities	Revision	§§ 10-1-109, 10-2-104, 10-2-704, and 10-3-1110, C.R.S.	The purpose of this regulation is to clarify the responsibility of insurance producers to treat each insurance policy and premiums handled thereon as a separate account of their insureds unless specific authorization has been obtained from insureds to commingle multiple obligations and funds.	Insurance producers
10	DOI	March, 2019	Rule 1-2-18	1-2-18 - Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities	Revision	§§ 10-1-109 and 10-3-1110, C.R.S.	The purpose of this regulation is to set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with a	Life Insurance and Annuity Insurers, Producers, and Consumers

							life insurance or annuity product.	
11	DOI	March, 2019	Rule 2-5-1	2-5-1 - Consumer Goods Service Contracts	Revision	§§ 10-1-109 and 10-4-1609(5), C.R.S.	This regulation shall apply to all providers of service contracts sold in the state of Colorado, except those specifically excluded in § 10-4-1602, C.R.S.	Service contract insurers and consumers
12	DOI	March, 2019	Rule 3-3-3	3-3-3 - Credit for Reinsurance	Revision	§§ 10-1-109(1), 10-3-529(4), 10-3-705, 10-6-129, 10-14-505 and 10-16-109,	The purpose of this regulation is to set forth rules and procedural requirements that the Commissioner deems necessary to carry out the provisions of Section 10-3-701 et. seq., C.R.S., regarding the conditions and circumstances under which a domestic insurer may reduce their liabilities, or establish an asset associated with risks reinsured.	Entities that purchase reinsurance
13	DOI	March, 2019	Rule 4-1-9	4-1-9 - Valuation of Life Insurance Policies Model Regulation (Including the Introduction and Use of New Select Mortality Factors)	Revision	§§10-1-109 and 10-7-313.7, C.R.S.	A. The purpose of this regulation is to clarify the provisions of the Standard Nonforfeiture and Valuation Act (Part 3, Article 7 of Title 10, C.R.S.) by providing: 1. Tables of select mortality factors and rules for their use; 2. Rules concerning a	Insurers who offer life insurance policies

							<p>minimum standard for the valuation of plans with non level premiums or benefits; and</p> <p>3. Rules concerning a minimum standard for the valuation of plans with secondary guarantees.</p> <p>B. The method for calculating basic reserves defined in this regulation will constitute the Commissioners' Reserve Valuation Method for policies to which this regulation is applicable.</p>	
14	DOI	March, 2019	Rule 4-1-14	4-1-14 - Military Sales Practices	Revision	§§ 10-1-109 and 10-7-116, C.R.S.	<p>The purpose of this regulation is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.</p>	Insurers, producers, and consumers
15	DOI	March, 2019	Rule 4-2-3	4-2-3 - Advertisements of Accident and Sickness Insurance	Revision	§§ 10-1-109 and 10-3-1110, C.R.S.	<p>The purpose of this regulation is to establish minimum criteria to assure proper and accurate description</p>	Insurers, producers, and consumers



							and to protect prospective purchasers with respect to the advertisement of accident and sickness insurance in the same manner as the regulation governing advertisements of Medicare supplement insurance. This regulation assures the clear and truthful disclosure of the benefits, limitations and exclusions of policies sold as accident and sickness insurance by the establishment of standards of conduct in the advertising of accident and sickness insurance in a manner that prevents unfair, deceptive and misleading advertising and is conducive to accurate presentation and description to the insurance-buying public through the advertising media and material used by insurance producers and companies.	
16	DOI	March, 2019	Rule 4-2-8	4-2-8 - Concerning	Revision	§§ 10-1-109 and	The purpose of this	Carriers, producers,

				Required Health Insurance Benefits for Home Health Services and Hospice Care		10-16-104(8)(d), C.R.S.	regulation is to establish requirements for standard policy provisions, which state clearly and completely the criteria for and extent of coverage for home health services and hospice care and to facilitate prompt and informed decisions regarding patient placement and discharge.	and consumers
17	DOI	March, 2019	Rule 4-2-15	4-2-15 - Required Provisions in Carrier Contracts with Providers, Carrier Contracts with Intermediaries Negotiating on Behalf of Providers, and Carrier Contracts with Intermediaries Conducting Utilization Reviews	Revision	§§ 10-1-109, 10-16-121(5), and 10-16-708, C.R.S.	The purpose of this regulation is to describe the entities subject to the provisions of §§ 10-16-121, and 10-16-705, C.R.S., which concern the required provisions in insurance carrier's contracts with health care providers and intermediaries, and to establish how those entities shall meet the requirements of the above sections.	Carriers, intermediaries, and health care providers
18	DOI	March, 2019	Rule 4-2-52	4-2-52 - Concerning Insurer Special Fee Assessments for the Colorado Health Benefit Exchange	Repeal	§§ 10-1-109 and 10-22-109(3), C.R.S.	The purpose of this regulation is to establish rules governing the assessment and collection of fees	Carriers and C4HCO

							necessary to assist in the funding of the Colorado Health Benefit Exchange.	
19	DOI	March, 2019	Rule 4-6-13	4-6-13 - Quarterly Rate Filing Requirements for Small Group Health Benefit Plans	Revision	§§ 10-1-109(1), 10-16-107 and 10-16-109, C.R.S.	The purpose of this regulation is to establish rules concerning the quarterly filing of rates for small group health benefit plans.	Carriers and consumers
20	DOI	March, 2019	Rule 5-1-14	5-1-14 - Penalties for Failure to Promptly Address Property and Casualty First Party Claims	Revision	§§ 10-1-109 and 10-3-1110, C.R.S.	The purpose of this regulation is to describe the procedure and circumstances under which penalties will be imposed for failure to make timely decisions and/or payment on first party claims.	Insurers and consumers
21	DOI	April, 2019	Rule 2-4-1	2-4-1 - Concerning Surplus Lines Insurance issued by non-admitted insurers	Revision	§§ 10-1-109, and 10-5-117, C.R.S.	The purpose of this regulation is to establish standards regarding the placement of insurance by producers and the qualification of insurers pursuant to the Colorado Nonadmitted Insurance Act, § 10-5-101, et seq., C.R.S. and the “Nonadmitted and Reinsurance Reform Act of 2010”, 15 U.S.C. sec 8201 et. seq., as amended. This regulation also serves to further protect Colorado	Insurers and consumers

							insurance consumers by setting forth necessary disclosure requirements for surplus lines insurance contracts.	
22	DOI	April, 2019	Rule 3-1-3	3-1-3 - Concerning Actuarial Opinions	Revision	§§ 10-1-109, 10-5-117, 10-6-129, 10-16-109, C.R.S.	The purpose of this regulation is to improve the Colorado Insurance Division's surveillance of the financial condition of companies, for the protection of all policyholders, contract holders and the general public, by requiring an annual opinion of a qualified actuary as to the adequacy of a company's reserves and other actuarial items which ought to be established in the required annual statement filings.	Insurers
23	DOI	April, 2019	Rule 4-1-1	4-1-1 - Variable Annuity Contracts	Revision	§§ 10-1-109, and 10-7-405, C.R.S.	The purpose of this regulation is to establish the standards and limitations for variable annuity contracts issued by insurers authorized for such sales in Colorado.	Insurers and consumers
24	DOI	May, 2019	Rule 1-2-14	1-2-14 - Concerning Record Keeping and Reporting	Revision	§§ 10-1-108(7), 10-1-109, 10-2-104, and 10-2-705, C.R.S.	The purpose of this regulation is to establish the requirements to file	Insurance producers and consumers

				Requirements for Insurance Producers Authorized to Write Bonds, and the Format of the Required Disclosure Statement			the annual report required by § 10-2-415.6, C.R.S., and describe additional documents that must be retained by insurance producers pursuant to § 10-2-705(5), C.R.S.	
25	DOI	May, 2019	Rule 1-2-20	1-2-20 - Bail Bonds Forms	Revision	§§ 10-1-108(7), 10-1-109 and 10-2-104, C.R.S.	The purpose of this regulation is to establish five (5) standardized bail bond forms that may be used by bail insurance companies and their insurance producers licensed by the state of Colorado. The use of these forms, apart from the disclosure statement, is not mandatory. The disclosure statement contained in this regulation must be used by bail insurance companies and their insurance producers licensed by the state of Colorado. For purposes of market conduct examination exceptions, proper use of these forms will ensure compliance with the relevant	Insurers and consumers

							requirements of § 10-2-705, C.R.S., for each form.	
26	DOI	May, 2019	Rule 4-1-5	4-1-5 - Permitting Same Minimum Nonforfeiture Standards for Men and Women Insured under 1980 CSO and 1980 CET Mortality Tables	Revision	§§10-1-109, and 10-7-305.1(8)(f), C.R.S.	The purpose of this regulation is to permit individual life insurance policies to provide the same cash surrender values and paid-up nonforfeiture benefits to both men and women to the extent necessary to comply with the U.S. Supreme Court decision in Arizona Governing Committee vs. Norris. No change in minimum valuation standards is implied by this regulation. The purpose of the January 1, 1989 amendment to this regulation, which was to add the Alternative Rule in Section 6, is to permit the use of smoker/nonsmoker status in providing the same cash surrender values and paid-up nonforfeiture benefits to both men and women.	Insurers and consumers
27	DOI	May, 2019	Rule 4-2-21	4-2-21 - External	Revision	§§	The purpose of this	Carriers and

				Review of Benefit Denials of Health Coverage Plans		10-1-109, 10-16-109, and 10-16-113.5(4)(d), C.R.S.	regulation is to provide standards for the external review process set forth in § 10-16-113.5, C.R.S., including the approval of independent external review entities. It is being amended to facilitate the implementation of certain provisions of recently enacted HB 13-1266.	consumers
28	DOI	May, 2019	Rule 4-2-38	4-2-38 - Contraceptive Benefits	Revision	§§ 10-1-109 and 10-16-104(3)(a)(I) C.R.S.	The purpose of this regulation is to implement Colorado insurance law and ensure carriers are providing coverage for contraception in policies in the same manner as any other sickness, injury, disease or condition is otherwise covered under the policy or contract.	Carriers, health care providers, and consumers
29	DOI	May, 2019	Rule 4-2-45	4-2-45 - Uniform Individual and Small Group Health Benefit Plan Applications	Revision	§§ 10-1-109, 10-16-107.5(1), and 10-16-109, C.R.S.	The purpose of this regulation is to promulgate rules concerning the uniform individual and small group health benefit plan applications.	Carriers, C4HCO, and consumers
30	DOI	June, 2019	Rule 4-2-51	4-2-51 - Carrier Discontinuance of a	Revision	§§ 10-1-109, 10-16-105.1(6)(a),	The purpose of this regulation is to establish	Carriers and consumers

				Health Benefit Plan		10-16-105.7(3)(c), and 10-16-109, C.R.S.	standards for carriers in discontinuing health benefit plans pursuant to the requirements of Colorado law.	
31	DOI	June, 2019	Rule 4-4-1	4-4-1 - Concerning requirements for long-term care insurance	Revision	§§ 10-1-109(1), 10-7-113(3), 10-16-107(1), 10-19-106, 10-19-113.7 and 10-3-1110(1), C.R.S.	The purpose of this regulation is to promote the public interest and the availability of long-term care insurance policies, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to establish standards for long-term care insurance, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care coverage.	Issuers of Long Term Care Insurance policies, producers, and consumers
32	DOI	June, 2019	Rule 5-1-10	5-1-10 - Rate and Rule Filing Submission Requirements Property and Casualty Insurance	Revision	§§ 10-1-108(7), 10-1-109, 10-3-1110, 10-4-110.7, 10-4-404, and 10-4-404.5, C.R.S.	The purpose of this regulation is to ensure that property and casualty insurance rates are not excessive, inadequate or unfairly	Property and Casualty Insurers



							<p>discriminatory by establishing the requirements for rate and rule filings. This regulation contains annual rate filing requirements for homeowners and private passenger automobile insurance. These lines of business are specifically included in this regulation because these products are widely purchased by consumers. Annual rate filings, rather than other methods the Division of Insurance (Division) may use, are preferred because of the prospective nature of the information contained in rate filings. Since a company's rates filed with the Division must be used until replaced by another rate filing, the Commissioner of Insurance cannot determine if rates included in prior rate filings continue to be appropriate for current or future economic</p>	
--	--	--	--	--	--	--	--	--

							conditions, or adequately reflect recent Colorado loss experience. Rate filings are reasonable and necessary means to ensure that current rates are appropriate and compliant with Colorado statutes and regulations.	
33	DOI	June, 2019	Rule 5-1-18	5-1-18 - Concerning the Elements of Certification for Certain Property and Casualty, Credit, and Excess Loss Forms and Contracts	Revision	§§ 10-1-109, 10-3-1110, 10-4-419, 10-4-633, 10-4-633.5, 10-10-109, and 10-16-119, C.R.S.	The purpose of this regulation is to promulgate rules applicable to the filing of property and casualty and credit forms and contracts that include, but are not limited to, the Family Medical Leave Act (FMLA), unemployment, credit property, excess loss insurance new policy forms, new policy form listings, annual reports of policy forms, and certifications of policy forms.	Property and Casualty Insurers
34	DOI	June, 2019	Rule 5-2-12	5-2-12 - Concerning Automobile Insurance Consumer Protections	Revision	§§ 10-1-109, 10-4-601.5, 10-4-625 and 10-4-628(4), C.R.S.	The purpose of this regulation is to interpret and implement the provisions of Part 6 of Article 4 of Title 10 of the Colorado Revised Statutes. In addition, this	Property and Casualty Insurers and consumers

							regulation provides rules governing the rejection of coverage, cancellation, nonrenewal, increase in premium, and reduction in coverage on complying policies of automobile insurance.	
35	DOI	June, 2019	Rule 8-1-1	8-1-1 - Title Insurance Rate and Fee Filing	Revision	§§ 10-1-108(7), 10-1-109, 10-3-1110, 10-4-403, 10-4-404, 10-11-118 C.R.S.	The purpose of this regulation is to ensure that title insurance rates and fees are not excessive, inadequate or unfairly discriminatory. This regulation contains filing requirements for both title insurance companies and title insurance agents. This regulation ensures that consumers receive the benefits of competition in the area of title insurance and ensures consumer protection.	Title insurance entities and consumers
36	DOI	July, 2019	Rule 8-1-2	8-1-2 - Title Insurance Consumer Protection	Revision	§§ 10-1-108(7), 10-1-109, 10-3-131, and 10-3-1110, C.R.S.	The purpose of this regulation is to ensure that consumers receive the benefits of competition in the area of title insurance and to ensure consumer protection.	Title insurance entities and consumers

37	DOI	July, 2019	Rule 1-2-4	1-2-4 - Continuing Education Requirements for Licensed Insurance Producers, Including Public Adjusters	Revision	§§ 10-1-109, 10-2-104, 10-2-301 and 10-19-113.7, C.R.S.	This regulation establishes continuing education requirements for persons licensed to sell certain types of insurance, including public adjusters. Additionally, this regulation establishes the procedures for filing course completion information by the course sponsors.	Insurance producers
38	DOI	July, 2019	Rule 1-2-10	1-2-10 - Concerning the Regulation of Insurance Producers, Including Public Adjusters, and Authorized Insurers by the Colorado Division of Insurance	Revision	§§ 10-1-109, 10-2-104, 10-2-407, 10-2-413, 10-2-417 and 10-16-414, C.R.S.	This regulation sets forth the terms and conditions for licensing insurance producers, including public adjusters, and regulates certain requirements of insurers, agencies, producers and entities acting as public adjusters. This regulation also establishes the fees required by § 10-2-413, C.R.S. Nothing in this regulation shall change or modify any provisions of a Colorado motor vehicle insurance plan as may be adopted by the Commissioner under the authority of §	Insurance producers and consumers

							10-4-412, C.R.S.	
39	DOI	July, 2019	Rule 3-4-1	3-4-1 - Holding Company System	Revision	§§ 10-1-109(1) and 10-3-809, C.R.S.	The purpose of this regulation is to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Insurance Holding Company Systems Act, Part 8 of Article 3 of Title 10 of the Colorado Revised Statutes. The information called for by this regulation is hereby declared to be necessary and appropriate in the public interest and for the protection of the policyholders in this State.	Insurers
40	DOI	August, 2019	Rule 4-1-2	4-1-2 - Advertising and Sales Promotion of Life Insurance and Annuities	Revision	§§ 10-1-108(8), 10-1-109 and 10-3-1110, C.R.S.	The purpose of this regulation is to set forth minimum standards and guidelines to assure a full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies and annuity contracts.	Insurers and consumers
41	DOI	August, 2019	Rule 4-1-3	4-1-3 - Variable Life	Revision	§§10-1-109 and	The purpose of this	Life Insurers

				Insurance		10-7-405, C.R.S.	regulation is to establish the standards and limitations for variable life insurance policies issued by insurers authorized for such sales in Colorado.	
42	DOI	August, 2019	Rule 4-1-6	4-1-6 - Permitting Smoker/Non-smoker Mortality Tables for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits	Revision	§§10-1-109, 10-7-305.1(8)(f) and 10-7-309(1)(a)(III), C.R.S.	The purpose of this regulation is to permit the use of mortality tables that reflect differences in mortality between smokers and nonsmokers in determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits for plans of insurance with separate premium rates for smokers and nonsmokers.	Life Insurers
43	DOI	August, 2019	Rule 4-1-10	4-1-10 - Recognition of the 2001 CSO Mortality Table	Revision	§§ 10-1-109(1), 10-7-305.1(8)(f), and 10-7-309(1)(a)(III), C.R.S.	The purpose of this regulation is to recognize, permit and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in accordance with §§ 10-7-309(1), 10-7-305.1(8)(f), and 10-7-313, C.R.S., and	Life Insurers

							Sections 5A and 5B of Colorado Regulation 4-1-9.	
44	DOI	August, 2019	Rule 4-2-9	4-2-9 - Concerning Non-discriminatory treatment of Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Related Illnesses by Life and Health Carriers	Revision	§§ 10-1-109, 10-3-1104.5(3)(d)(II) and 10-3-1110, C.R.S.	The purpose of this regulation is to establish standards that will assure nondiscriminatory treatment with respect to AIDS and HIV infection in underwriting practices, policy forms and benefit provisions utilized by entities subject to the provisions of this regulation. It also establishes what HIV/AIDS medical tests, permitted under § 10-3-1104.5, C.R.S., are considered medically reliable for underwriting decisions.	Carriers and consumers
45	DOI	August, 2019	Rule 4-2-47	4-2-47 - Concerning the Required Benefit for Applied Behavior Analysis Therapy for the Treatment of Autism Spectrum Disorder	Revision	§§ 10-1-109, 10-16-104(1.4)(b) and 10-16-109, C.R.S.	The purpose of this regulation is to establish the requirements for the benefit provided by carriers for applied behavior analysis (ABA) therapy for the treatment of autism spectrum disorders in children.	Carriers and consumers
46	DOI	August, 2019	Rule 4-4-4	4-4-4 - Concerning Long-term Care	Revision	§ 10-1-109, C.R.S. and	The purpose of this regulation is to implement	Long-term care insurers and

				Partnership Program		Department of Health Care Policy and Financing under the authority of § 25.5-1-303, C.R.S.	rules and assist in the development of the Colorado Long-Term Care Partnership (LTCP) Program in Colorado.	consumers
47	DOI	August, 2019	Rule 7-1-1	7-1-1 - Registration Requirement, Fees for Cash-Bonding Agents and Professional Cash-Bond Agents	Revision	§§10-1-109(1), 10-23-102, and 10-23-104, C.R.S.	This regulation sets forth the procedures and fees related to obtaining, maintaining, renewing and reinstating registration as a Cash-Bonding Agent or Professional Cash-Bail agent with the Division. This regulation also sets forth the format for filing the premium fee statement required by § 10-23-104(1)(d), C.R.S and paying the associated premium fee required by § 10-23-104, C.R.S.	Bail Industry
48	DOI	August, 2019	Rule 7-1-2	7-1-2 - Cash-Bonding Agent and Professional Cash-Bond Agent Cash Qualification Bond Requirements and Provisions for Release of Qualification Bond	Revision	§§ 10-1-109, and 10-23-105, C.R.S.	Pursuant to § 10-23-105, C.R.S., Cash-Bonding Agents and Professional Cash-Bail Agents are required to post a cash qualification bond in the amount of \$50,000 to secure payment of defaulted bonds and to	Bail Industry



							pay any final, non-appealable judgment for failure to return collateral, including costs and attorney's fees, if awarded. This regulation sets forth the terms and conditions for such qualification bonds including the procedures required release of the qualification bond.	
49	DOI	August, 2019	Rule 7-1-3	7-1-3 - Concerning Record Keeping and Reporting Requirements for Cash-Bonding Agents and Professional Cash-Bonding Agents and the Format of the Required Disclosure Statement	Revision	§§ 10-1-109, 10-23-102, and 10-23-108, C.R.S.	The purpose of this regulation is to establish the requirements to file the annual report required by § 10-23-102, C.R.S.; set forth the format of the Disclosure Form required by § 10-23-108(2), C.R.S.; and describe additional documents that must be retained by Cash-Bonding Agents and Professional Cash-Bail Agents pursuant to § 10-23-108(5), C.R.S.	Bail Industry
50	DOI	Sept., 2019	Rule 1-2-19	1-2-19 - Contract and Record Retention Rules for Public Adjusters	Revision	§§ 10-1-109 and 10-2-417, C.R.S.	This regulation sets forth the requirements and standards for contracts between a public adjuster and an Insured. This regulation	Public Adjusters and consumers

							also sets forth the requirements for the retention of records by public adjusters and the securing of evidence of the financial responsibility of a public adjuster through a surety bond executed and issued by an insurer.	
51	DOI	Sept., 2019	Rule 4-1-13	4-1-13 - Permitting the Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities	Revision	§§ 10-1-109 and 10-7-309(1)(a)(III), C.R.S. and Sections 5A and 5B of Colorado Insurance Regulation 4-1-9.	The purpose of this regulation is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with §10-7-309(1)(a)(III), C.R.S. and Sections 5A and 5B of Colorado Insurance Regulation 4-1-9.	Life Insurers
52	DOI	Sept., 2019	Rule 4-2-23	4-2-23 - Procedure for Provider-Carrier Dispute Resolution	Revision	§§ 10-1-109, 10-16-109, and 10-16-708, C.R.S.	The purpose of this regulation is to establish procedures for resolution of provider-carrier disputes, as required by § 10-16-705(13), C.R.S.	Carriers and consumers
53	DPO	June, 2019	All Rules	Colorado Medical		24-4-103,	Implement Sunset Review	Board Licensees,

				Board		12-36-104(1)(a)	Legislation	Professional associations, COPIC, CHA and other key stakeholders
54	DPO	June, 2019	3 CCR 713-22, Rule 120: THE DEMONSTRATION OF CONTINUED COMPETENCY BY PHYSICIAN APPLICANTS FOR LICENSURE, REINSTATEMENT OR REACTIVATION OF A LICENSE	Colorado Medical Board	Revision	24-4-103, 12-36-104(1)(a), 12-36-114.5, 12-36-116(1)(d), 24-34-102(8)(d)(II), and 12-36-137(5), C.R.S.	Review of Rule 120 to determine if physicians practicing in specialties that do not commonly require classic patient contact are required to meet the same continued competency requirements. Such specialties include, but are not limited to, forensic psychiatry, pathology, and preventative medicine.	Board Licensees, Professional associations, COPIC, CHA and other key stakeholders
55	DPO	July, 2019	4 CCR 736-1, Rule 6- Information Required to be Reported to the Board	State Board of Marriage and Family Therapists	Revision	12-43-203(3)(a)	Clarify required to report includes filing a complaint	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
56	DPO	July, 2019	4 CCR 736-1, Rule 8- Reporting Change of Address, Telephone Number,	State Board of Marriage and Family Therapists	Revision	12-43-203(3)(a)	Include electronic addresses	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders

			Name					
57	DPO	July, 2019	4 CCR 736-1, Rule 18- Continued Professional Competency	State Board of Marriage and Family Therapists	Revision	12-43-203(3)(a)	Clarify Volunteer hours	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
58	DPO	July, 2019	4 CCR 736-1, Rule 16- Records Required to be kept and Record Retention	State Board of Marriage and Family Therapists	Revision	12-43-203(3)(a)	Clarify discharge summary	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
59	DPO	July, 2019	4 CCR 736-1, Rule 14- Licensure by Examination	State Board of Marriage and Family Therapists	Revision	12-43-203(3)(a)	Clarify supervision requirements and time frame for completion of licensing requirements	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
60	DPO	Nov., 2018	3 CCR 716-1 ; Chapter 1 - Rules and Regulations for the Licensure of Practical and Professional Nurses	State Board of Nursing	Revision	12-38-108(1)(b),(c) and (j); 12-38-110; 12-38-111; 12-38-112; 12-38-112.5; and 12-38-118, C.R.S.	To specify requirements for obtaining and maintaining professional and practical nursing licensure.	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
61	DPO	Nov., 2018	3 CCR 716-1 ; Chapter 20	State Board of Nursing	Revision	12-38-108(1)(b),(c) and (j); 12-38-110;	To clarify requirements of multistate nurse	Board Licensees, professional

			- Rules and Regulations for Multi State Nurse Licensure			12-38-111; 12-38-112; 12-38-112.5; and 12-38-118, C.R.S.	licensure, incorporating HB18-027	associations; educators, relevant state agencies and other key stakeholders
62	DPO	July, 2019	3 CCR 721-1, Rule 6- Information Required to be Reported to the Board	State Board of Psychologist Examiners	Revision	12-43-203(3)(a), C.R.S.	Clarify duty to report includes filing a complaint	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
63	DPO	July, 2019	3 CCR 721-1, Rule 8- Reporting Change of Address, Telephone Number, Name	State Board of Psychologist Examiners	Revision	12-43-203(3)(a), C.R.S.	Include electronic addresses	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
64	DPO	July, 2019	3 CCR 721-1, Rule 14- Licensure by Examination	State Board of Psychologist Examiners	Revision	12-43-203(3)(a), C.R.S.	Clarify supervision requirements and time frame for completion of licensing requirements	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
65	DPO	July, 2019	3 CCR 721-1, Rule 16- Records Required to be kept and Record Retention	State Board of Psychologist Examiners	Revision	12-43-203(3)(a), C.R.S.	Clarify discharge summary	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders

66	DPO	July, 2019	3 CCR 721-1, Rule 20- Continued Professional Competency	State Board of Psychologist Examiners	Revision	12-43-203(3)(a), C.R.S	Clarify rules regarding volunteer hours	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
67	DPO	July, 2019	4 CCR 726-1, Rule 6- Information Required to be Reported to the Board	State Board of Social Work Examiners	Revision	12-43-203(3)(a), C.R.S	Clarify duty to report includes filing a complaint	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
68	DPO	July, 2019	4 CCR 726-1, Rule 8- Reporting Change of Address, Telephone Number, Name	State Board of Social Work Examiners	Revision	12-43-203(3)(a), C.R.S	Include electronic addresses	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
69	DPO	July, 2019	4 CCR 726-1, Rule 16- Records Required to be kept and Record Retention	State Board of Social Work Examiners	Revision	12-43-203(3)(a), C.R.S	Clarify discharge summary	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
70	DPO	July, 2019	4 CCR 726-1, Rule 14- Licensure by Examination	State Board of Social Work Examiners	Revision	12-43-203(3)(a), C.R.S	Clarify supervision requirements and time frame for completion of licensing requirements	Board Licensees, professional associations; educators, relevant state agencies and

								other key stakeholders
71	DPO	July, 2019	4 CCR 726-1, Rule 18 Continued Professional Competency	State Board of Social Work Examiners	Revision	12-43-203(3)(a), C.R.S	Clarify rules regarding volunteer hours	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
72	DPO	July, 2019	4 CCR 734-1, Rule 6- Information Required to be Reported to the Board	State Board or Registered Psychotherapists	Revision	12-43-203(3)(a), C.R.S	Clarify duty to report includes filing a complaint	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
73	DPO	July, 2019	4 CCR 734-1, Rule 8- Reporting Change of Address, Telephone Number, Name	State Board or Registered Psychotherapists	Revision	12-43-203(3)(a), C.R.S	Include electronic addresses	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
74	DPO	July, 2019	4 CCR 734-1, Rule 13- Records Required to be Kept and Record Retention	State Board or Registered Psychotherapists	Revision	12-43-203(3)(a), C.R.S	Clarify discharge summary	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
75	DPO	July, 2019	4 CCR 734-1, Rule 18	State Board or Registered Psychotherapists	Revision	12-43-203(3)(a), C.R.S	Clarify rules regarding volunteer hours	Board Licensees, professional associations;

			Continued Professional Competency					educators, relevant state agencies and other key stakeholders
76	DPO	Nov., 2018	4 CCR 732-1, Rule 204: Licensure by Examination for Physical Therapists	State Physical Therapy Board	Revision	12-35-124(1)(g), 24-4-103 and 12-35-107(b), C.R.S.	To implement HB18-115 and HB17-1057	Board licensees, professional associations, other key stakeholders
77	DPO	Nov., 2018	4 CCR 732-1, Rule 205: Licensing of Foreign-Trained Physical Therapist Graduates of Non-Accredited Programs.	State Physical Therapy Board	Revision	12-35-124(1)(g), 24-4-103 and 12-35-107(b), C.R.S.	To implement HB18-115 and HB17-1057	Board licensees, professional associations, other key stakeholders
78	DPO	Nov., 2018	4 CCR 732-1, Rule 206: Licensure by Endorsement for Physical Therapists.	State Physical Therapy Board	Revision	12-35-124(1)(g), 24-4-103 and 12-35-107(b), C.R.S.	To implement HB18-115 and HB17-1057	Board licensees, professional associations, other key stakeholders
79	DPO	Nov., 2018	4 CCR 732-1; Rule	State Physical Therapy Board	Revision	12-35-124(1)(g), 24-4-103 and	To implement HB18-115 and HB17-1057	Board licensees, professional



			213: Continuing Professional Competency Requiremen ts for Licensure Renewal for Physical Therapists.			12-35-107(b), C.R.S.		associations, other key stakeholders
80	DPO	Nov., 2018	4 CCR 732-1, Rule 304: Certificatio n of Foreign-Trai ned Physical Therapist Assistant Graduates of Non-Accredi ted Programs.	State Physical Therapy Board	Revision	12-35-124(1)(g), 24-4-103 and 12-35-107(b), C.R.S.	To implement HB18-115 and HB17-1057	Board licensees, professional associations, other key stakeholders
81	DPO	Nov., 2018	4 CCR 732-1, Rule 211: Requiremen ts for Physical Therapists to Perform Dry Needling.	State Physical Therapy Board	Revision	12-35-124(1)(g), 24-4-103 and 12-35-107(b), C.R.S.	To implement HB18-115 and HB17-1057	Board licensees, professional associations, other key stakeholders
82	DPO	Nov., 2018	4 CCR	State Physical	Revision	12-35-124(1)(g),	To implement HB18-115	Board licensees,

			732-1, Rule 303: Certification by Examination for Physical Therapist Assistants.	Therapy Board		24-4-103 and 12-35-107(b), C.R.S.	and HB17-1057	professional associations, other key stakeholders
83	DPO	Nov., 2018	4 CCR 732-1, Rule 305: Certification by Endorsement for Physical Therapist Assistants.	State Physical Therapy Board	Revision	12-35-124(1)(g), 24-4-103 and 12-35-107(b), C.R.S.	To implement HB18-115 and HB17-1057	Board licensees, professional associations, other key stakeholders
84	DPO	Nov., 2018	4 CCR 732-1, Rule 307: Continuing Professional Competency Requirements for Licensure Renewal for Physical Therapy Assistants.	State Physical Therapy Board	New	12-35-124(1)(g), 24-4-103 and 12-35-107(b), C.R.S.	To implement HB18-115 and HB17-1057	Board licensees, professional associations, other key stakeholders
85	DPO	Nov., 2018	3 CCR 720-1, Rule 2: Standards.	State Plumbing Board	Revision	2-58-104(1)(d), 12-58-104.5(1) and (5), C.R.S.	Update plumbing code to the IPC 2018.	Board Licensees, Local Inspectors, professional association, other key

								construction industry stakeholders
86	DPO	Nov., 2018	3 CCR 720-1-All Rules	State Plumbing Board	Revision	2-58-104(1)(d), 12-58-104.5(1) and (5), C.R.S.	Review rules to reduce burden and clarify requirements for registrants	Board Licensees, Local Inspectors, professional association, other key construction industry stakeholders
87	DPO	Nov., 2018	3 CCR 707-1, Rule 13: Advertisement of Free Or Discounted Services	Board of Chiropractic Examiners	Revision	12-33-107(1)(a), C.R.S.	Clarify advertising requirements	Board licensees, professional associations, other key stakeholders
88	DPO	Nov., 2018	3 CCR 707-1, Rule 30: proposed new rule	Board of Chiropractic Examiners	New	12-33-107(1)(a), C.R.S.	To implement rules regarding pre-paid services	Board licensees, professional associations, other key stakeholders
89	DPO	Jan., 2019	4 CCR 742-1- All rules	Office of Funeral Homes and Crematory Registration		12-54-408(8)(a) and 24-4-103, C.R.S.	Review rules to reduce burden and clarify requirements for registrants	Board licensees, professional associations, other key stakeholders
90	DPO	Jan., 2019	4 CCR 733-1- All Rules	Office of Outfitter Registration		12-55.5-104, and 24-4-103, C.R.S.	Review rules to reduce burden and clarify requirements for registrants	Board licensees, professional associations, other key stakeholders
91	DPO	July, 2019	4 CCR 744-1, Rule 6- Information Required to	Board of Addiction Counselors	Revision	12-33-107(1)(a), C.R.S.	Clarify reporting includes filing a complaint	Board Licensees, professional associations; educators, relevant state agencies and

			be Reported to the Board					other key stakeholders
92	DPO	July, 2019	4 CCR 744-1, Rule 8- Reporting Change of Address, Telephone Number, Name	Board of Addiction Counselors	Revision	12-43-203(3)(a), C.R.S	Include electronic addresses	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
93	DPO	July, 2019	4 CCR 744-1, Rule 17- Continued Professional Competency	Board of Addiction Counselors	Revision	12-43-203(3)(a), C.R.S	Clarify rules regarding volunteer hours	Board licensees, professional associations, other key stakeholders
94	DPO	July, 2019	4 CCR 744-1, Rule 15 - Records Required to be Kept and Record Retention	Board of Addiction Counselors	Revision	12-43-203(3)(a), C.R.S	Clarify discharge summary	Board licensees, professional associations, other key stakeholders
95	DPO	July, 2019	4 CCR 737-1, Rule 6- Information Required to be Reported to the Board	Board of Licensed Professional Counselors	Revision	12-43-203(3)(a), C.R.S	Clarify required to report includes filing a complaint	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
96	DPO	July, 2019	4 CCR 737-1, Rule 8- Reporting Change of	Board of Licensed Professional Counselors	Revision	12-43-203(3)(a), C.R.S	Include electronic addresses	Board Licensees, professional associations; educators, relevant

			Address, Telephone Number, Name					state agencies and other key stakeholders
97	DPO	July, 2019	4 CCR 737-1, Rule 14- Licensure by Examination	Board of Licensed Professional Counselors	Revision	12-43-203(3)(a), C.R.S	Clarify supervision requirements and time frame for completion of licensing requirements	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
98	DPO	July, 2019	4 CCR 737-1, Rule 19- Inactive License Status and Reactivation of a License	Board of Licensed Professional Counselors	Revision	12-43-203(3)(a), C.R.S	Cross referenced statute has been repealed	Board Licensees, professional associations; educators, relevant state agencies and other key stakeholders
99	DPO	July, 2019	4 CCR 737-1, Rule 18 Continued Competency	Board of Licensed Professional Counselors	Revision	12-43-203(3)(a), C.R.S	Clarify rules regarding volunteer hours	Board licensees, professional associations, other key stakeholders
100	DPO	June, 2019	All rules	Colorado Podiatry Board	unknown	12-32-104(1), C.R.S.	Implement Sunset Review Legislation	Board licensees, professional associations, other key stakeholders
101	DPO	June, 2019	All rules	State Board of Accountancy	unknown	12-2-104 (1)(b), 24-4-103, and 24-4-106 of the C.R.S.	Implement Sunset Review Legislation	Board licensees, professional associations, other key stakeholders
102	DPO	June, 2019	All rules	Colorado Passenger Tramway Board	unknown	25-5-704 (1)(a), C.R.S.	Implement Sunset Review Legislation	Board licensees, professional associations, other

								key stakeholders
103	DPO	June, 2019	3 CCR 710-1 All rules	State Electrical Board	unknown	Section 12-23-104(2)(a), and § 24-4-103, C.R.S.	Implement Sunset Review Legislation; Review rules to reduce burden and clarify requirements for registrants	Board licensees, professional associations, other key stakeholders
104	DRE	June, 2019	4 CCR 725-1	Real Estate Brokers	Revision	12-61-114(4) and 12-61-114.5, C.R.S.	The purpose of the rule-making will be will to conduct a review to assess the continuing need for, appropriateness and cost effectiveness of the program's rules as mandated by SB 14-063. The assessment will determine whether the rules should be continued in their current form, modified or repealed. This will include reviewing and revising the definitions, licensure requirements, application process, education requirements, accounting and trust accounts, practice standards, use of forms, declaratory orders and exceptions of initial decisions.	The Division is working with the following stakeholders: 1) Colorado Association of Realtors; 2) Denver Metro Commercial Association of Realtors; 3) Institute of Real Estate Management; 4) Building Owners and Managers Association; 5) National Association of Residential Property Managers; 6) Colorado Bar Association; and 7) licensed practitioners
105	DRE	March, 2019	4 CCR 725-2	Colorado Board of Real Estate Appraisers	New	12-61-704, C.R.S.	The purpose of the rule-making will be to amend, repeal or add new administrative rules as a result of the passage of SB	The Division will work with the following stakeholders: 1) Colorado Coalition of Appraisers; 2)

							18-210. This bill directly affects the regulation of appraisal management companies and reconciles state law with current federal law and regulations. Additionally, the Board may conduct rule-making to review and revise any licensing, education and practice standards as necessary to comply with any federal mandates.	Colorado Association of Real Estate Appraisers (North & South Chapters); 3) Appraisal Institute; 4) Appraisal Management representatives; 5) American Society of Farm Managers and Rural Appraisers; 6) Appraisal Subcommittee; and 7) Licensed and Certified practitioners
106	DRE	Nov., 2018	4 CCR 725-3	Mortgage Loan Originators and Mortgage Companies	Revision	12-61-902.5(2), 12-61-905(10), and 12-61-905.1(3), C.R.S.	The purpose of the rule-making will be to amend, repeal or add new administrative rules as a result of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 having been amended. The Economic Growth, Regulatory Relief, and Consumer Protection Act directly affects the transition of state licensed mortgage loan originators and mandates that state regulatory authorities implement a temporary transitional license. Additionally, the Board may conduct rule-making	The Division will work with the following stakeholders: 1) Colorado Mortgage Lenders Association; 2) Colorado Association of Mortgage Professionals; 3) Rocky Mountain Home Association; 4) licensed practitioners; and 5) mortgage compliance managers

							to review and revise any licensing, education and practice standards as necessary to comply with any federal mandates.	
107	DRE	May, 2019	4 CCR 725-7	Community Association Managers	Repeal	12-61-1002(2), C.R.S.	The purpose of the rule-making will be to repeal all of the administrative rules as a result of the practice act not being reauthorized by the legislature. The program will statutorily sunset on July 1, 2019. The Division will reserve a placeholder to amend, repeal or add new administrative rules if legislation is introduced and signed into law that would reauthorize the regulatory program in some form.	The Division will work, if needed, with the following stakeholders: 1) Community Association Institute (Denver & Southern Chapters); 2) Colorado Legislative Action Committee; 3) Owner Association Attorneys 4) Education Providers; 5) Representative from small & large management companies; and 6) Designated and licensed practitioners
108	DOS	July 1, 2019	51-4.4(IA)(E)	Investment Advisor Examination Requirements	Revision	Section 11-51-704	The rule is being revised so that the examination requirements for investment advisor representatives are consistent with the new rules promulgated by the Financial Industry Regulatory Authority and approved by the Securities and Exchange	The Division will work with the Investment Adviser community in Colorado



							Commission relating to sales representative examinations.	
109	DOS	July 1, 2019	51-3.5	Investment Advisor rule repealed	Repeal	Section 11-51-704	This Rule is being repealed because the corresponding statutory section, 11-51-307(1)(k) has been repealed	The Division will work with the Investment Adviser community in Colorado
110	DOS	July 1, 2019	51-4.10(IA)(B)(2)(b)	Investment Advisor itemized invoices	Revision	Section 11-51-704	Amend rule so that investment advisors who do not directly deduct fees will be required to send itemized invoices to clients	The Division will work with the Investment Adviser community in Colorado
111	DOS	July 1, 2019	51-4.6(IA)(15)	Solicitor Rule	Repeal	Section 11-51-704	Repeal as the Solicitor Rule has been repealed	The Division will work with the Investment Adviser community in Colorado
112	PUC	Unknown	723-5 Water	Water	Revision	General rulemaking authority.	Review rules for potential updates/language changes in general and as a result of SB18-134.	Water utilities
113	PUC	May, 2019	723-4 GPS	GPS	Revision	Requirements from PHMSA for penalties	Incorporate changes required by PHMSA to include a regulatory process to investigate excavator damage to gas pipeline and codify process for investigations and civil penalties.	Gas utilities and excavators, One Call Center
114	PUC	March, 2019	723-3 and 723-4 Electric and	Electric and Gas	Revision	SB17-271	Implement a utility's transparent process to recover actual costs from	Electric and Gas IOUs

			Gas				property owners when the utility has extended its service to the property.	
115	PUC	March, 2019	723-3 Electric	Electric	Revision	General rulemaking authority and 40-2-123 and 124	Update rules regarding Renewable Energy Standard, Electric Resource Planning, Qualifying Facilities and energy storage.	Electric Utilities, renewable energy providers and other stakeholders
116	PUC	Feb., 2019	723-6 Transportation	Transportation	Revision	HB18-1320	Implementation of reduced regulation for large market taxi cabs.	Common carriers - taxi cabs
117	PUC	Nov., 2019	723-7 Rail	Rail	Revision	General rulemaking authority	Implementation of changes to federal rules - Public Transportation Agency Safety Plan	RTD

## **Departmental Regulatory Agendas**

### **Department**

Department of Public Health and Environment

# 2019

## Regulatory Agenda

January 1, 2019 – December 31, 2019



**COLORADO**  
Department of Public  
Health & Environment

## Overview

Pursuant to Colorado Revised Statute §2-7-203(4), the Colorado Department of Public Health and Environment submits the following 2019 Regulatory Agenda. Pursuant to statutory requirements concerning the Department's Regulatory Agenda (§2-7-202(6), C.R.S.), this also contains the department's 2018 Regulatory Agenda Summary and the 2018 Results of Mandatory Review of Rules (Pursuant to §24-4-103.3(4), C.R.S.).

## 2019 Regulatory Agenda

Schedule <i>Anticipated hearing date</i>	Rule Number and Title or Brief Description	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or other basis for adoption of rule	Part of Mandatory Rule Review? <i>(X if yes)</i>	Purpose	Stakeholders
February 19, 2019	6 CCR 1007-3, Parts 260, 262, 263, 264, and 265 - Hazardous Waste E-Manifest Requirements	Hazardous Materials and Waste Management Division/Solid and Hazardous Waste Commission	Revision	§25-15-301, et seq., C.R.S.		To incorporate the federal fee structure for the hazardous waste electronic manifest rule	Treatment, storage and disposal facilities, generators of hazardous waste, and transporters of hazardous waste
February 19, 2019	6 CCR 1007-3, Part 279 - Standards for the Management of Used Oil	Hazardous Materials and Waste Management Division/Solid and Hazardous Waste Commission	Revision	§25-15-301, et seq., C.R.S.		To clarify the regulations regarding mixtures of used oil and hazardous waste by Very Small Quantity Generators; additional corrections of typographical errors	Used oil generators, transporters, processors, re-refiners, burners and marketers
February 19, 2019	6 CCR 1007-2, Part 1, Sections 1 and 18 - Waste Grease Transporters, Facilities and Personal Users of Waste Grease	Hazardous Materials and Waste Management Division/Solid and Hazardous Waste Commission	Revision	§30-20-123 C.R.S.		Waste grease financial assurance and waste grease fees	Waste grease facilities, waste grease transporters

Schedule <i>Anticipated hearing date</i>	Rule Number and Title or Brief Description	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or other basis for adoption of rule	Part of Mandatory Rule Review? <i>(X if yes)</i>	Purpose	Stakeholders
February 20, 2019	5 CCR 1006-2 - Medical Use of Marijuana	Center for Health and Environmental Data/Board of Health	Revision	Colorado Constitution, Article XVIII, §14; §25-1.5-106, C.R.S.		Updates to the process for petitioning to add a debilitating condition	Medical professionals, Medical Marijuana Registry patients, Colorado Department of Revenue
March 20, 2019	6 CCR 1010-4 - Colorado Milk and Dairy Products Regulation	Division of Environmental Health and Sustainability/Board of Health	Revision	§25-1.5-104, 25-5.5-103, §25-5.5-109(2)(5)(6), §25-5.5-205, §25-5.5-309, §25-5.5-310 C.R.S.	X	Revisions following EO2 rule review and updates to align with current federal practice	Dairy farmers, dairy plants and consumers
March 20, 2019	6 CCR 1009-5 - Newborn Hearing Screening	Center for Health and Environmental Data/Board of Health	New rule	§25-4-1004.7 (8) and (9), C.R.S.		Implement HB 18-1006	Newborns, parents, health care providers, laboratories, individuals and interested in deaf and hard of hearing screening
March 20, 2019	6 CCR 1009-5, Regulation 4 - Rules And Regulations Pertaining To Preparations For A Bioterrorist Event, Pandemic Influenza, Or An Outbreak By A Novel And Highly Fatal Infectious Agent Or Biological Toxin	Office of Emergency Preparedness and Response/Board of Health	Revision	§25-1-108, §25-1-501, §24-33.5-701, et. seq., C.R.S.	X	Updates following EO2 rule review, alignment with statute and national practice including HB 17-1240	Local public health, Emergency Medical Services providers, hospitals, rural clinics, Regional Emergency Medical and Trauma Services Advisory Councils, Emergency Medical Practice Advisory Council and federally qualified health centers

Schedule <i>Anticipated hearing date</i>	Rule Number and Title or Brief Description	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or other basis for adoption of rule	Part of Mandatory Rule Review? <i>(X if yes)</i>	Purpose	Stakeholders
March 21, 2019	5 CCR 1001-24 - Regulation 20 - Low Emission Vehicle Program	Air Pollution Control Division/Air Quality Control Commission	New Rule	§25-7-102, 105(1), 106(1), C.R.S.		To consider adoption of a zero emission vehicle program in Colorado	Auto manufacturers, Auto dealers, consumers of automobiles, individual citizens
April 17, 2019	6 CCR 1011-1- Health Facilities Chapter 2, Chapter 4, Chapter 5, Chapter 8, Chapter 9, Chapter 10, Chapter 15, Chapter 18, Chapter 19, Chapter 20, and Chapter 21	Health Facilities Emergency Medical Services/Board of Health	Revision	§25-1.5-103, §25-3-105, C.R.S.		Fee modifications including fee increases for Hospitals, Nursing Care Facilities, Facilities for Persons with Developmental and Intellectual Disabilities, Community Clinics and Community Clinics and Emergency Centers, Dialysis Treatment Centers, Psychiatric Hospitals, Hospital Units, Ambulatory Surgical Centers and Ambulatory Surgical Centers with Convalescent Centers, and Hospices	Licensees; families, patients and consumers; professional associations that represent licensed health care facilities

Schedule <i>Anticipated hearing date</i>	Rule Number and Title or Brief Description	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or other basis for adoption of rule	Part of Mandatory Rule Review? <i>(X if yes)</i>	Purpose	Stakeholders
April 17, 2019	6 CCR 1015-4, Statewide Emergency Medical and Trauma Care System, Chapter 3 - Designation of Trauma Facilities	Health Facilities Emergency Medical Services/Board Of Health	Revision	§25-3.5-704, C.R.S.	X	Expanded scope of care to address neurological services and updates following EO2 rule review	Trauma facilities, patients and their families
April 17, 2019	6 CCR 1009-1 - Epidemic and Communicable Disease Control	Disease Control and Environmental Epidemiology/Board of Health and Executive Director	Revision	§25-1.5-102, §25-1- 122 C.R.S.	X	Annual update of the reportable conditions, require reporting of negative Hepatitis C results, updates following EO2 rule review and technical edits	Hospitals, local public health, health care providers
April 17, 2019	6 CCR 1014-7 - Core Public Health Services and 6 CCR 1014-9 - Colorado Minimum Quality Standards for Public Health Services	Office of Planning and Partnership/ Board of Health	Revision	§25-1-503, C.R.S.	X	Implement EO2 rule review and stakeholder feedback	Local Public Health Agencies, and the communities they serve
May 21, 2019	6 CCR 1007-2 Part 1, Sections 2 and 3 - Minimum Standards and Standards for Solid Waste Disposal Landfill Sites and Facilities	Hazardous Materials and Waste Management Division/Solid and Hazardous Waste Commission	Revision	§30-20-109, C.R.S.		Training requirements for landfill operators	Landfill owners and operators



Schedule <i>Anticipated hearing date</i>	Rule Number and Title or Brief Description	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or other basis for adoption of rule	Part of Mandatory Rule Review? <i>(X if yes)</i>	Purpose	Stakeholders
May 21, 2019	6 CCR 1007-2, Part 1, Section 1 - Administrative Information	Hazardous Materials and Waste Management Division/Solid and Hazardous Waste Commission	Revision	§30-20-109, C.R.S.		Created a tiered system for annual fees which will reduce fees for small facilities	All owners and operators of facilities that pay annual fees
May 21, 2019	6 CCR 1007-3, Part 6 - Solid and Hazardous Waste Commission Fees	Solid and Hazardous Waste Commission	Revision	§25-15-314, C.R.S.		Amend SHWC fee to fund operation of the commission for fiscal year 2019-2020	Treatment, storage and disposal facilities, generators of hazardous waste, and transporters of hazardous waste
June 10, 2019	5 CCR 1002-33 and 37 - Standards and Classifications for the Upper and Lower Colorado River Basins	Water Quality Control Division/Water Quality Control Commission	Revision	§25-8-203 and 204, C.R.S.	X	Update classifications and standards in these river basins	Point source dischargers, municipalities, environmental organizations, anglers, recreationalists
July 17, 2019	6 CCR 1007-1 Part 6 - Radiation Control: X-Rays in the Healing Arts (15)	Hazardous Materials and Waste Management/Board of Health	Revision	§25-1-108, §25-1.5-101(1)(k) and (1)(l), and §25-11-104 C.R.S.	X	Updates consistent with Suggested State Regulations Part F, stakeholder and program requested needs/updates and updates following EO2 rule review	Registered medical facilities using x-ray machines
July 17, 2019	6 CCR 1007-1 Part 2- Radiation Control: Registration of Radiation Machines, Facilities, and Services	Hazardous Materials and Waste Management/Board of Health	Revision	§25-1-108, 25-1.5-101(1)(k) and (1)(l), and §25-11-104 C.R.S.	X	Updates necessary for consistency with concurrent Part 6 changes and updates following EO2 rule review	Registered facilities using x-ray machines, service companies who sell or install x-ray machines, and certain x-ray machine operators

Schedule <i>Anticipated hearing date</i>	Rule Number and Title or Brief Description	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or other basis for adoption of rule	Part of Mandatory Rule Review? <i>(X if yes)</i>	Purpose	Stakeholders
July 18, 2019	5 CCR 1001-8 - Regulation Number 6 - Standards of Performance for New Stationary Sources	Air Pollution Control Division/Air Quality Control Commission	Revision	§24-4-103; §25-7- 102, -105 to -109, and -114, C.R.S.		Incorporate by reference new and amended federal New Source Performance Standards into the commission's regulations	All owners and operators of industrial equipment subject to federal New Source Performance Standards, local and State agencies, industrial trade associations, citizen and environmental groups, and individual citizens
July 18, 2019	5 CCR 1001-10 - Regulation Number 8 - Control of Hazardous Air Pollutants	Air Pollution Control Division/Air Quality Control Commission	Revision	§24-4-103; §25-7- 105 and §25-7-109, C.R.S.		Incorporate by reference new and amended federal National Emissions Standards for Hazardous Air Pollutants into the commission's regulations	All owners and operators of industrial equipment subject to these federal regulations, local and State agencies, industrial trade associations, citizen and environmental groups, and individual citizens
July 18, 2019	5 CCR 1001-10 - Regulation Number 8 - Control of Hazardous Air Pollutants, Part B	Air Pollution Control Division/Air Quality Control Commission	Revision	§24-4-103; §25-7- 105 and §25-7-109, C.R.S.		General update of the rule	Building owners (residential as well as public and commercial), schools and the many facets of the asbestos industry including the Colorado

Schedule <i>Anticipated hearing date</i>	Rule Number and Title or Brief Description	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or other basis for adoption of rule	Part of Mandatory Rule Review? <i>(X if yes)</i>	Purpose	Stakeholders
August 20, 2019	6 CCR 1007-2, Part 1, Section 3 - Standards for Solid Waste Landfill Sites and Facilities	Hazardous Materials and Waste Management Division/Solid and Hazardous Waste Commission	Revision	§30-20-109, C.R.S.		Engineering Design and Operations Plan (EDOP) amendments and expiration dates	All solid waste facilities required to have an Engineering Design and Operations Plan
October 7, 2019	5 CCR 1002-84 - Reclaimed Water Control Regulation	Water Quality Control Division/Water Quality Control Commission	Revision	§25-8-202 and §25-8-205, C.R.S.		Consider allowing the use of reclaimed water for irrigating edible crops and hemp	Municipalities, developers, hemp industry, general public
October 17, 2019	5 CCR 1003-5 - Swimming Pools & Mineral Baths	Water Quality Control Division/Board of Health	Revision	§25-5-807, §25-5-810, C.R.S.	X	Updates following EO2 rule review	Local public health, swimming pool operators
October 17, 2019	6 CCR 1015-2, Rules Pertaining to the Implementation of Cardiopulmonary Resuscitation (CPR) Directives by Emergency Medical Service Personnel	Health Facilities Emergency Medical Services/Board Of Health	Revision	§15-18.6-103, C.R.S.	X	Updates following EO2 rule review	Individuals, patients and their families, health facilities, Emergency Medical Services agencies and personnel
November 12, 2019	5 CCR 1002-31 - Basic Water Quality Standards for Surface Water, and 5 CCR 1002-33 - Water Quality Standards for the Upper Colorado River Basin	Water Quality Control Division/Water Quality Control Commission	Revision	§25-8-202 and §25-8-203, C.R.S.		Consider modifying the molybdenum standard statewide and for the Blue River segment 14	Climax Molybdenum, Denver Water, downstream water users, general public

Schedule <i>Anticipated hearing date</i>	Rule Number and Title or Brief Description	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or other basis for adoption of rule	Part of Mandatory Rule Review? <i>(X if yes)</i>	Purpose	Stakeholders
November 19, 2019	6 CCR 1007-3, Part 262 - Hazardous Waste Annual Fees	Hazardous Materials and Waste Management Division/Solid and Hazardous Waste Commission	Revision	§25-15-301, et seq., C.R.S.		Generator fees for P-listed wastes	Generators of P- listed wastes
November 20, 2019	6 CCR 1011-1- Health Facilities Chapter 2, Chapter 4, Chapter 5, Chapter 8, Chapter 9, Chapter 15, Chapter 18, Chapter 19, Chapter 20, Chapter 21, and Chapter 22	Health Facilities Emergency Medical Services/Board Of Health	Revision	§25-1.5-103(1), §25-1-108(1)(c)(II), C.R.S.	X	Revisions following EO2 rule review including relocation of references to the FGI Guidelines in numerous rule chapters to the General Rules.	Licensees; families, patients and consumers; professional associations that represent licensed health care facilities
November 20, 2019	6 CCR 1010-9 - Campgrounds and Recreation Areas; 6 CCR 1010-10 - Group Gathering Areas; 6 CCR 1010- 11 - Sanitary Standards and Regulations for Labor Camps; 6 CCR 1010-12 - Mobile Home Parks; 6 CCR 1010- 14 - Sanitary Standards and Regulations for Public Accommodations	Environmental Health and Sustainability/Board of Health	Revision	§25-1.5-101(1)(h), C.R.S.	X	Revisions following EO2 rule review	Organizations representing campground and recreational areas, mobile home owners, local governments, municipalities, and Coloradans

Schedule <i>Anticipated hearing date</i>	Rule Number and Title or Brief Description	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or other basis for adoption of rule	Part of Mandatory Rule Review? <i>(X if yes)</i>	Purpose	Stakeholders
November 21, 2018	5 CCR 1001-9 - Regulation Number 7 - Control of Ozone via Ozone Precursors and Control of Hydrocarbons via Oil and Gas Emissions (Emissions of Volatile Organic Compounds and Nitrogen Oxides)	Air Pollution Control Division/Air Quality Control Commission	Revision	§25-7-105 through 110, C.R.S.		Revise provisions for purposes of State Implementation Plan	All owners and operators of equipment subject to these federal regulations, local and State agencies, industrial trade associations, citizen and environmental groups, and individual citizen
December 9, 2019	5 CCR 1002-32 through 38 - Classifications and Standards in River Basins	Water Quality Control Division/Water Quality Control Commission	Revision	§25-8-202 and §25- 8-203, C.R.S.		Revise temporary modifications expiring in the next two years, and consider proposals for new temporary modifications	Entities with a temporary modification expiring in the next two years
December 9, 2019	5 CCR 1002-31 through 38 - Classifications and Standards in River Basins	Water Quality Control Division/Water Quality Control Commission	Revision	§25-8-202 and §25- 8-203, C.R.S.		Consider a revised standard for cadmium	Entities with a cadmium permit limit, anglers, recreationalists, water providers
December 9, 2019	5 CCR 1002-93, Colorado's List of Impaired Waters	Water Quality Control Division/Water Quality Control Commission	Revision	§25-8-202, §25-8- 203, 25-8-204, C.R.S.	X	Consider revisions to Colorado's List of Impaired Waters	Entities with a discharge permit, municipalities, anglers, recreationalists, water providers, environmental groups, general public

# 2018

## Regulatory Agenda Summary January 1, 2018 – December 31, 2018



## 2018 Regulatory Agenda Summary

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or Other Basis	Purpose	Schedule for adoption	Stakeholders	Status
6 CCR 1010-6, Schools	Division of Environmental Health and Sustainability/ Board of Health	Revision	§25-1-108(1)(c)(l), §25-1.5-101(1)(a), (h), (k), and (l), §25-1.5-102(1)(a) and (d), C.R.S.	Update the rule to clarify the health and sanitation standards and reduce the regulatory burden related to live poultry and school chemical storage	January 17, 2018	Schools, students, families, and community members interested in the health and sanitation of schools	Adopted January 17, 2018
5 CCR 1005-2, Lab Testing for Alcohol & Other Drugs	Laboratory Services Division/Board of Health	Revision	§42-4-1304, C.R.S.	Recognize accreditation in the certification process to implement HB14-1340	January 17, 2018	Accredited laboratories seeking certification	Adopted in part January 17, 2018; additional rulemaking hearing scheduled for December 19, 2018
6 CCR 1007-2, Part 1, Section 8.5.5 - Recycling and Beneficial Use	Hazardous Materials and Waste Management Division/Solid and Hazardous Waste Commission	Revision	§30-20-102(5), C.R.S.	Modify general site requirements for industrial recycling operations	February 20, 2018	New industrial recycling facilities	Continued to May 15, 2018 - Adopted May 15, 2018
6 CCR 1007-2, Part 1, Section 1.7.3 - Correct fee error in Section 1.7.3	Hazardous Materials and Waste Management Division/Solid and Hazardous Waste Commission	Revision	§30-20-109, C.R.S.	Correction of annual fee error in Section 1.7.3	February 20, 2018	Transfer facilities, recycling facilities	Adopted February 20, 2018

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or Other Basis	Purpose	Schedule for adoption	Stakeholders	Status
6 CCR 1007-3, Part 261, Appendix VIII - Add PFC compounds as hazardous constituents	Hazardous Materials and Waste Management Division/Solid and Hazardous Waste Commission	Revision	§25-15-301, et seq., C.R.S.	Add PFC compounds to listing of hazardous constituents	February 20, 2018	All regulated facilities under an Order or Permit with potential release of PFC compounds	Adopted February 20, 2018
6 CCR 1011-2, Standards for Health Maintenance Organizations	Health Facilities Emergency Medical Services Division/ Executive Director	Repeal	§10-16-402 and §10-16-416, C.R.S.	Repeal rule due to SB 17-249 assigning duties to Commissioner of Insurance.	February 21, 2018	Health maintenance organizations, Department of Regulatory Agencies	Adopted February 21, 2018
5 CCR 1004-1, Environmental Management System Permit Program	Division of Environmental Health and Sustainability/ Executive Director	Repeal	§25-6.6-104, C.R.S.	Repeal following EO2 rule review and sunset review	February 21, 2018	Environmental Leadership Program participants	Adopted February 21, 2018
6 CCR 1011-1 Standards for Hospitals and Health Facilities	Health Facilities Emergency Medical Services Division/Board of Health	Repeal	§25-1.5-103, §25-3-101 and §25-3-103, C.R.S.	Repeal obsolete language as health facilities now appear in dedicated chapters and the General Rules at Chapter 2.	March 21, 2018	Health Facilities	Adopted March 21, 2018
6 CCR 1010-13, Penal Institutions	Division of Environmental Health and Sustainability/ Board of Health	Revision	§25-1.5-101(1)(h) C.R.S.	Revisions following EO2 rule review	March 21, 2018	Penal institutions, Department of Corrections, Department of Human Services	Withdrawn



Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or Other Basis	Purpose	Schedule for adoption	Stakeholders	Status
5 CCR 1006-2, Medical Use of Marijuana	Center for Health and Environmental Data/Board of Health	Revision	Colorado Constitution, Article XVIII, §14; §25-1.5-106, C.R.S.	Updates to align with current practice, implement SB 17-017, and modify fees.	March 21, 2018	Medical professionals, Medical Marijuana Registry patients, Colorado Department of Revenue	Adopted March 21, 2018
5 CCR 1002-11, Colorado Primary Drinking Water Regulations	Water Quality Control Division/Water Quality Control Commission	Revision	§25-1.5-101, §25-1.5 Part 2, §25-1-109, §25-1-114, 25- 1-114.1, and §25-8-202, C.R.S.	To address primacy issues with the revised total coliform rules and to revise a definition in the cross connection control rules	April 9, 2018	Public drinking water systems	Adopted May 7, 2018
5 CCR 1002-42, Site-Specific Water Quality Classifications and Standards for Ground Water	Water Quality Control Division/Water Quality Control Commission	Revision	§25-8-202, 203, and 204, C.R.S.	To consider a site specific ground water standard for PFOS and PFOS in the Widefield Aquifer	April 9, 2018	Point source dischargers into the specified area, users of the water in the aquifer, entities subject to a corrective action in the specified area	Adopted May 7, 2018
6 CCR 1011-1, Chapter 7, Assisted Living Residences	Health Facilities Emergency Medical Services Division/ Board Of Health	Revision	§25-1.5-102, §25-1-122 C.R.S.	Update and expand the reportable conditions, updates following EO2 rule review and technical edits	April 18, 2018	Hospitals, local public health, health care providers	Adopted April 18, 2018
6 CCR 1007-3, Part 6 - Solid and Hazardous Waste Commission Fees	Solid and Hazardous Waste Commission	Revision	§25-15-314, C.R.S.	Amend SHWC fee to fund operation of the commission for fiscal year 2018-2019	May 15, 2018	Treatment, storage and disposal facilities, generators of hazardous waste, and transporters of hazardous waste	Adopted May 15, 2018

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or Other Basis	Purpose	Schedule for adoption	Stakeholders	Status
6 CCR 1007-2, Part 1, Section 1.8.6 - Administrative information	Hazardous Materials and Waste Management Division/Solid and Hazardous Waste Commission	Revision	§30-20-109, C.R.S	Modify Section 1.8.6 - financial assurance utilizing a trust fund	May 15, 2018	Permitted solid waste facilities utilizing a trust fund for their financial assurance	Adopted May 15, 2018
5 CCR 1003-7 - Beneficial Use of Water Treatment Sludge	Hazardous Materials and Waste Management Division/Solid and Hazardous Waste Commission	Repeal	§30-20-109, C.R.S.	Repeal of obsolete language and move applicable parts to Sections 8 & 12	May 15, 2018	Users of water treatment sludges	Withdrawn
6 CCR 1007-2, Part 1, Sections 8 & 12 - Beneficial Use of Water Treatment Sludge	Hazardous Materials and Waste Management Division/Solid and Hazardous Waste Commission	Revision	§30-20-109, C.R.S.	Make conforming changes due to repeal of 5 CCR 1003-7	May 15, 2018	Users of water treatment sludges	Withdrawn
6 CCR 1007-3, Parts 260, 261, 262, 263, 264, 265, 268, 273, 279 and 100 - Hazardous Waste Generator Rule	Hazardous Materials and Waste Management Division/Solid and Hazardous Waste Commission	Revision	§25-15-301, et seq., C.R.S.	Federal RCRA rule to reorganize, consolidate, and clarify requirements for hazardous waste generators	May 15, 2018	Hazardous waste generators	Adopted May 15, 2018

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or Other Basis	Purpose	Schedule for adoption	Stakeholders	Status
6 CCR 1009-1, Epidemic and Communicable Disease Control	Disease Control and Environmental Epidemiology Division/Board of Health and Executive Director	Revision	§25-1.5-102, §25-1-122 C.R.S.	Update and expand the reportable conditions, updates following EO2 rule review and technical edits	May 16, 2018	Hospitals, local public health, health care providers	Adopted May 16, 2018
6 CCR 1010-22, Body Art Establishments	Division of Environmental Health and Sustainability/ Board of Health	Revision	§25-4-2101, C.R.S.	Updates following EO2 rule review	May 16, 2018	Body artist, patrons of body art establishments, and local public health	Withdrawn
6 CCR 1010-17, Urea Formaldehyde Foam Insulation	Division of Environmental Health and Sustainability/ Board of Health	Revision	§25-5-317 C.R.S.	Updates following EO2 rule review	May 16, 2018	Manufacturers of and contractors using urea formaldehyde foam insulation	Adopted October 2, 2018
5 CCR 1002-32, Classifications and Numeric Standards for Arkansas River Basin, 5 CCR 1002-36, Classifications and Numeric Standards for Rio Grande River Basin	Water Quality Control Division/Water Quality Control Commission	Revision	§25-8-203 and §25-8-204, C.R.S.	Update classifications and standards in these river basins	June 11, 2018	Point source dischargers, municipalities, environmental organizations, anglers, recreationalists	Adopted August 6, 2018
6 CCR 1009-2, Infant Immunization and Immunization of Students Attending School	Disease Control & Environmental Epidemiology Division/Board of Health	Revision	§25-4-903 & 904 C.R.S.	Annual ACIP update, updates following EO2 rule review and revisions to align with statute	June 20, 2018	Health care providers, school nurses, child care providers, schools, local public health, citizen groups, and individual citizens	Adopted June 20, 2018

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or Other Basis	Purpose	Schedule for adoption	Stakeholders	Status
5 CCR 1003-5, Swimming Pools & Mineral Baths	Water Quality Control Division/Board of Health	Revision	\$25-5-807 & 810, C.R.S.	Updates following EO2 rule review	July 18, 2018	Local public health, swimming pool operators	Withdrawn
5 CCR 1001-8 - Regulation Number 6, Standards of Performance for New Stationary Sources	Air Pollution Control Division/Air Quality Control Commission	Revision	\$24-4-103; \$25-7-102, -105 to -109, and -114, C.R.S.	Incorporate by reference new and amended federal New Source Performance Standards into the commission's regulations	July 19, 2018	All owners and operators of industrial equipment subject to federal New Source Performance Standards, local and State agencies, industrial trade associations, citizen and environmental groups, and individual citizens	Adopted May 17, 2018
5 CCR 1001-10 - Regulation Number 8 - Control of Hazardous Air Pollutants	Air Pollution Control Division/Air Quality Control Commission	Revision	\$24-4-103; \$25-7-105 and \$25-7-109, C.R.S.	Incorporate by reference new and amended federal National Emissions Standards for Hazardous Air Pollutants into the commission's regulations	July 19, 2018	All owners and operators of industrial equipment subject to these federal regulations, local and State agencies, industrial trade associations, citizen and environmental groups, and individual citizens	Adopted May 17, 2018

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or Other Basis	Purpose	Schedule for adoption	Stakeholders	Status
5 CCR 1001-9 - Regulation Number 7, Control of Ozone via Ozone Precursors and Control of Hydrocarbons via Oil and Gas Emissions (Emissions of Volatile Organic Compounds and Nitrogen Oxides)	Air Pollution Control Division/Air Quality Control Commission	Revision	§25-7-105 through 110, C.R.S.	Establish reasonably available control technology (RACT) via categorical rules for boilers, turbines, glass melters and shale kilns in a continued effort to establish RACT for major sources of VOC and/or NOx in the Denver Metropolitan North Front Range Moderate Ozone Nonattainment Area	July 19, 2018	All owners and operators of industrial equipment subject to these federal regulations, local and state agencies, industrial trade associations, citizen and environmental groups, individual citizens	Adopted July 19, 2018
5 CCR 1002-84, Reclaimed Water Control Regulation	Water Quality Control Division/Water Quality Control Commission	Revision	§25-8-202 and §25-8-205, C.R.S.	Consider proposal to allow reclaimed water to be used for toilet flushing and irrigation of cannabis	August 6, 2018	Municipalities, developers, cannabis industry, general public	Adopted October 9, 2018
5 CCR 1002-38 - Classifications and Numeric Standards for South Platte River Basin, Laramie River Basin, Republican River Basin, Smoky Hill River Basin	Water Quality Control Division/Water Quality Control Commission	Revision	§25-8-203 and §25-8-204, C.R.S.	To consider a site specific standards proposal from London Mine	August 6, 2018	London Mine, downstream water users, other dischargers into these segments	Withdrawn
6 CCR 1007-1 Part 6, Radiation Control: X-Rays in the Healing Arts	Hazardous Materials and Waste Management Division/Board of Health	Revision	§25-1-108, §25-1.5-101(1)(k) and (1)(l), and §25-11-104 C.R.S.	Updates consistent with Suggested State Regulations Part F, stakeholder and program requested needs/updates and updates following EO2 rule review	August 15, 2018	Registered medical facilities using x-ray machines	Withdrawn

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or Other Basis	Purpose	Schedule for adoption	Stakeholders	Status
6 CCR 1007-1 Part 2, Radiation Control: Registration of Radiation Machines, Facilities, and Services	Hazardous Materials and Waste Management Division/Board of Health	Revision	§25-1-108, §25-1.5-101(1)(k) and (1)(l), and §25-11-104 C.R.S.	Updates necessary for consistency with concurrent Part 6 changes and updates following EO2 rule review	August 15, 2018	Registered medical facilities using x-ray machines	Withdrawn
6 CCR 1010-21, Wholesale Food	Division of Environmental Health and Sustainability/ Board of Health	Revision	§25-5-426; §25-4-1805, C.R.S.	Updates following EO2 rule review, alignment with statute and national practice	September 19, 2018	Wholesale food manufacturers and distributors	Adopted August 15, 2018
5 CCR 1005-2, Lab Testing for Alcohol & Other Drugs	Laboratory Services Division/Board of Health	Revision	§42-4-1304, C.R.S.	Alignment with current practice and updates following EO2 rule review	September 19, 2018	Certified laboratories, law enforcement, Department of Revenue, District Attorneys' Counsel, Defense Bar	Pending for December 19, 2018
6 CCR 1009-5 Regulation 4, Rules And Regulations Pertaining To Preparations For A Bioterrorist Event, Pandemic Influenza, Or An Outbreak By A Novel And Highly Fatal Infectious Agent Or Biological Toxin	Office of Emergency Preparedness and Response/Board of Health	Revision	§25-1-108, §25-1-501, §24-33.5-701, et. seq., C.R.S.	Updates following EO2 review, alignment with statute and national practice	September 19, 2018	Local public health, Emergency Medical Services providers, hospitals, rural clinics, Regional Emergency Medical and Trauma Services Advisory Councils, Emergency Medical Practice Advisory Council and federally qualified health centers	Withdrawn; rescheduled for 2019

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or Other Basis	Purpose	Schedule for adoption	Stakeholders	Status
5 CCR 1002-61, Colorado Discharge Permit System Regulation	Water Quality Control Division/Water Quality Control Commission	Revision	§25-8-501 through 505, C.R.S.	Update discharge permit system regulations	October 8, 2018	Point source dischargers	Pending for November 13, 2018
6 CCR 1015-4 Chapter 3, Designation of Trauma Facilities	Health Facilities Emergency Medical Services Division/Board of Health	Revision	§25-3.5-701 et seq.	Expanded scope for general surgery and neurological services including neurosurgery	October 17, 2018	Trauma facilities	Adopted October 18, 2018
5 CCR 1001-14 - Regulation Number 12, Reduction of Diesel Vehicle Emissions	Air Pollution Control Division/Air Quality Control Commission Division	Revision	§42-4-406; §42-2-414(2)(c); §42-2-412(2)(a); §42-2-403(1) C.R.S.	Revise Regulation Number 12, Part B to require training as a prerequisite to diesel emissions inspector licensing, and to clarify inspector training and qualification provisions	October 18, 2018	All owners and operators of diesel vehicles in the Front Range region, local and state agencies, industrial trade associations, citizen and environmental groups	Adopted October 18, 2018
5 CCR 1002-82, 401 Certification Regulation	Water Quality Control Division/Water Quality Control Commission	Revision	§25-8-202 and 205, C.R.S.	Revise procedures for application for and issuance of 401 certifications	November 13, 2018	Entities required to obtain a 401 certification, environmental groups, water conservation districts, water rights holders, municipalities	Pending for November 13, 2018

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or Other Basis	Purpose	Schedule for adoption	Stakeholders	Status
5 CCR 1001-1, Procedural Rules	Air Quality Control Commission	Revision	§25-7-104, C.R.S.	Revise rule based on rule review results, stakeholder input and staff recommendations	November 15, 2018	All stakeholders of the commission, including local and state agencies, industrial sources, industrial trade associations, citizen and environmental groups, individual citizens	Withdrawn
5 CCR 1001-9 - Regulation Number 7, Control of Ozone via Ozone Precursors and Control of Hydrocarbons via Oil and Gas Emissions (Emissions of Volatile Organic Compounds and Nitrogen Oxides)	Air Pollution Control Division/Air Quality Control Commission	Revision	§25-7-105 through 110, C.R.S.	Establish reasonably available control technology (RACT) via categorical rules for various brewing related operations in a continued effort to establish RACT for major sources of VOC and/or NOx in the Denver Metropolitan North Front Range Moderate Ozone Nonattainment Area	November 15, 2018	All owners and operators of industrial equipment subject to these federal regulations, local and state agencies, industrial trade associations, citizen and environmental groups, individual citizens	Pending for November 15, 2018
6 CCR 1007-2, Part 1, Section 10 - Waste Tires	Hazardous Materials and Waste Management Division/Solid and Hazardous Waste Commission	Revision	§30-20-1401, C.R.S.	Placeholder for year-end waste tire amendments	November 20, 2018	Waste tire haulers, processors, and monofills	Withdrawn
6 CCR 1007-2, Part 1, Section 1 - Miscellaneous clean-up of definitions, obsolete language	Hazardous Materials and Waste Management Division/Solid and Hazardous Waste Commission	Revision	§30-20-109, C.R.S.	Miscellaneous clean-up of definitions, numbering, formatting	November 20, 2018	All regulated facilities	Pending for November 20, 2018



Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or Other Basis	Purpose	Schedule for adoption	Stakeholders	Status
6 CCR 1015-3, Chapter 4: Licensure of Ground Ambulance Services	Health Facilities Emergency Medical Services Division/Board of Health	Revision	§25-3.5-308, C.R.S.	Updates following EO2 rule review	November 21, 2018	Regional Emergency Medical and Trauma Services Advisory Councils and ambulance agencies	Pending for November 21, 2018
5 CCR 1003-2 - Water and Wastewater Facility Operator Certification Requirements	Water Quality Control Division/Water and Wastewater Facility Operators Certification Board	Revision	§25-9-101 through 110, C.R.S.	To update the facility classification system to reflect modern treatment technology	November 27, 2018	Owners and operators of water and wastewater treatment facilities, certified operators	Pending for November 27, 2018
5 CCR 1002-32 through 38 - Classifications and Standards in River Basins	Water Quality Control Division/Water Quality Control Commission	Revision	§25-8-203 and 204, C.R.S.	Revise temporary modifications expiring in the next two years, and consider proposals for new temporary modifications	December 10, 2018	Entities with a temporary modification expiring in the next two years	Pending for December 10, 2018
5 CCR 1001-5 - Regulation Number 3, Stationary Source Permitting and Air Pollutant Emission Notice Requirements	Air Pollution Control Division/Air Quality Control Commission	Revision	§25-7-105 through 110, C.R.S.	Requirements to correspond to federal New Source Review (NSR) provisions. In addition to the revisions, the division may also correct any typographical, grammatical, and formatting errors found throughout Regulation Number 3	December 20, 2018	All owners and operators of industrial equipment subject to these federal regulations, local and state agencies, industrial trade associations, citizen and environmental groups, individual citizens	Adopted October 18, 2018

## Rulemakings that did not appear on the original 2018 Regulatory Agenda

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or Other Basis	Purpose	Contemplated Schedule for Adoption	Stakeholders	Status
5 CCR 1002-33 - Classifications and Standards for Upper Colorado River Basin and North Platte River	Water Quality Control Division/Water Quality Control Commission	Revision	§25-8-203 and 204, C.R.S.	Extend temporary modification for molybdenum on Blue River Segment 14	Added to the January 8, 2018 agenda	Climax Molybdenum, Denver Water, Users of water in Blue River Segment 14 or downstream, individual citizens	Adopted March 12, 2018
5 CCR 1002-43 - On-Site Wastewater Treatment System Regulations	Water Quality Control Division/Water Quality Control Commission	Revision	§25-10-101 et seq., C.R.S.	To address issues raised by Office of Legislative Legal Services	Added to the March 12, 2018 agenda	On-site wastewater treatment system users and providers, individual citizens	Adopted March 12, 2018
6 CCR 1007-2, Part 1, Section 1 - Various definitions	Hazardous Materials and Waste Management Division/Solid and Hazardous Waste Commission	Revision	§30-20-109 C.R.S.	To modify definitions of agricultural wastes, composting, anaerobic digestion, and deletion of custom mill	Added to the May 15, 2018 agenda	All regulated facilities	Adopted May 15, 2018
6 CCR 1015-6 - State-Designated Health Professional Shortage Area Methodology	Prevention Services Division/Board of Health	New Rule	§25-1.5-404, C.R.S.	To implement SB18-024	Emergency rule hearing added to the August 15, 2018 agenda	Behavioral health service providers, behavioral health professionals, local governments, individuals needing improved access to behavioral health services, CDHS, HCPF	Emergency rule adopted August 15, 2018

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or Other Basis	Purpose	Contemplated Schedule for Adoption	Stakeholders	Status
5 CCR 1003-2 - Water and Wastewater Facility Operator Certification Requirements	Water Quality Control Division/Water and Wastewater Facility Operators Certification Board	Revision	§25-9-101 through 110, C.R.S.	To reflect improvements to the application process, highlight options for veterans and military personnel, and make provision for a new mandatory regulatory training requirement	Added to the September 25, 2018 agenda	Owners and operators of water and wastewater treatment facilities, certified operators	Adopted September 25, 2018
5 CCR 1001-24 - Regulation 20 - Low Emission Vehicle Program	Air Pollution Control Division/Air Quality Control Commission	New Rule	§25-7-102, 105(1), 106(1), C.R.S.	To consider a new Regulation Number 20 incorporating specific provisions of the California low emission vehicle standards for new light-duty and medium-duty motor vehicles sold in Colorado beginning in the 2022 model year as well as requiring aftermarket replacement catalytic converters to meet California standards.	Added to the November 15-16, 2018 agenda	Auto manufacturers, Auto dealers, consumers of automobiles, individual citizens	Pending for November 15-16, 2018
6 CCR 1007-3, Part 262- Corrections to the Hazardous Waste Generator Rule	Hazardous Materials and Waste Management Division/Solid and Hazardous Waste Commission	Revision	§25-15-301, et seq., C.R.S.	To incorporate technical corrections and omissions from the May 2018 hearing	Added to the November 20, 2018 agenda	Hazardous waste generators	Pending for November 20, 2018

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or Other Basis	Purpose	Contemplated Schedule for Adoption	Stakeholders	Status
5 CCR 1003-2 - Water and Wastewater Facility Operator Certification Requirements	Water Quality Control Division/Water and Wastewater Facility Operators Certification Board	Revision	\$25-9-101 through 110, C.R.S.	To set the fees for certified operator exams	Added to the November 27, 2018 agenda	Owners and operators of water and wastewater treatment facilities, certified operators	Pending for November 27, 2018
5 CCR 1006-1, Vital Statistics	Center for Health and Environmental Data/Board of Health	Revision (move emergency rule to permanent)	\$25-2-103, C.R.S.	Implement EO2 review and enable one to change their sex designation through an administrative process	Added to December 19, 2018 agenda	Local public health agencies, offices designated by the State Registrar and consumers	Pending for December 19, 2018
6 CCR 1015-6 - State-Designated Health Professional Shortage Area Methodology	Prevention Services Division/Board of Health	Revision (move emergency rule to permanent)	\$25-1.5-404, C.R.S.	To implement SB18-024	Added to December 19, 2018 agenda	Behavioral health service providers, behavioral health professionals, local governments, individuals needing improved access to behavioral health services, CDHS, HCPF	Pending for December 19, 2018
5 CCR 1005 - Newborn Screening	Laboratory Services/Board of Health and Executive Director	Revision	\$25-4-1004, \$25-4-1004.5, C.R.S.	To implement EO2 rule review and HB 18-1006	Added to December 19, 2018 agenda	Parents, providers, birthing facilities, laboratories, newborn screening advocates and interested stakeholders	Pending for December 19, 2018

# 2018

## Results of Mandatory Review of Rules



## 2018 Results of Mandatory Review of Rules

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	Statutory or Other Basis	Month of Review Completion	Did review result in revisions to regulation?	Did the review result in repeal of any part of the regulation?	Did review result in repeal of entire CCR volume?	Adoption date (if applicable)
5 CCR 1006-2. Medical Use of Marijuana	Center for Health and Environmental Data	Colorado Constitution, Article XVIII, Section 14; §25-1.5-106, C.R.S.	January 2018	Y	Y	N	Adopted March 21, 2018
6 CCR 1009-1, Epidemic and Communicable Disease Control	Disease Control and Environmental Epidemiology Division	§25-1.5-102; §25-1-122; §25-4-402, §25-4-404, §25-4-405, and §25-4-1401 et seq., C.R.S.	February 2018	Y	N	N	Adopted May 16, 2018
6 CCR 1009-2, The Infant and Immunization Program, and Immunization of Students Attending School	Disease Control and Environmental Epidemiology Division	§25-4-903, §24-4-904, §25-4-1704, §25-4-1705, §25-4-2403, C.R.S.	February 2018	Y	N	N	N/A
6 CCR 1009-7, Detections, Monitoring, and Investigation of Environmental and Chronic Diseases	Disease Control and Environmental Epidemiology Division	§25-1-122, §25-1.5-101(1)(k), (l) and (p), §25-1.5-102, §25-1.5-105, C.R.S.	February 2018	N	N	N	N/A
6 CCR 1009-10, Colorado HIV and AIDS Prevention Grant Program	Disease Control and Environmental Epidemiology Division	§25-4-1403, §25-4-1404, C.R.S.	February 2018	N	N	N	N/A

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	Statutory or Other Basis	Month of Review Completion	Did review result in revisions to regulation?	Did the review result in repeal of any part of the regulation?	Did review result in repeal of entire CCR volume?	Adoption date (if applicable)
6 CCR 1009-11, Culturally and Linguistically Appropriate Hepatitis C Screening	Disease Control and Environmental Epidemiology Division	§25-4-2005, C.R.S.	February 2018	N	N	N	N/A
6 CCR 1011-1, Chapter 7, Assisted Living Residences	Health Facilities and Emergency Medical Services Division	§25-1.5-103, §25-3-101, §25-3-103, §25-27-104, C.R.S.	March 2018	Y	N	N	Adopted April 18, 2018
6 CCR 1010-13, Sanitary Standards for Penal Institutions	Division of Environmental Health and Sustainability	§25-1.5-101(1)(i), C.R.S.	March 2018	N	N	N	N/A
5 CCR 1002-73, Chatfield Reservoir Control Regulation	Water Quality Control Division	§25-8-205, C.R.S.	March 2018	N	N	N	N/A
6 CCR 1010-9, Campgrounds and Recreation Areas	Division of Environmental Health and Sustainability	§25-1.5-101(1)(h), §25-13-104, C.R.S.	April 2018	Y	Y	Y	Pending
6 CCR 1010-10, Group Gathering Areas	Division of Environmental Health and Sustainability	§25-1.5-101(1)(h), §25-13-104, C.R.S.	April 2018	Y	Y	Y	Pending

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	Statutory or Other Basis	Month of Review Completion	Did review result in revisions to regulation?	Did the review result in repeal of any part of the regulation?	Did review result in repeal of entire CCR volume?	Adoption date (if applicable)
6 CCR 1010-11, Sanitary Standards and Regulations for Labor Camps	Division of Environmental Health and Sustainability	§25-1.5-101(1)(h) & (i), C.R.S.	April 2018	Y	Y	Y	Pending
6 CCR 1010-12, Mobile Home Parks	Division of Environmental Health and Sustainability	§25-1.5-101(1)(h), C.R.S..	April 2018	Y	Y	Y	Pending
6 CCR 1010-14, Sanitary Standards and Regulations for Public Accommodations	Division of Environmental Health and Sustainability	25-1.5-101(1)(h), C.R.S.	April 2018	Y	Y	Y	Pending
6 CCR 1007-1, Part 5, Radiation Control- Radiation Safety Requirements for Industrial Radiographic Operations	Hazardous Materials and Waste Management Division	§25-1.5-101(1)(k) & (l), §25-11-103 & 104, §25-1-108, C.R.S.	April 2018	Y	N	N	Pending
6 CCR 1011-1, Chapter 10, Rehabilitation Centers	Health Facilities and Emergency Medical Services Division	§25-1.5-103 and §25-3-101, §25-3-103, C.R.S.	April 2018	Y	Y	N	Pending
5 CCR 1005-1, Environmental Laboratory Accreditation	Laboratory Services Division	§25-1.5-101(1)(e), C.R.S.	May 2018	N	N	N	N/A



Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	Statutory or Other Basis	Month of Review Completion	Did review result in revisions to regulation?	Did the review result in repeal of any part of the regulation?	Did review result in repeal of entire CCR volume?	Adoption date (if applicable)
5 CCR 1005-2, Testing for Alcohol and Other Drugs	Laboratory Services Division	\$42-4-1304 C.R.S.	May 2018	Y	Y	N	Pending
5 CCR 1005-4, Newborn Screening and Second Newborn Screening	Laboratory Services Division	\$25-4-801 through \$25-4-804, \$25-4-1001 through \$25-4-1006 (not including \$25-4-1004.7), C.R.S. (1998)	May 2018	Y	Y	N	Pending
6 CCR 1014-5, Rules for the Health Disparities Grant Program	Office of Health Equity	\$25-4-2203, C.R.S.	May 2018	N	N	N	N/A
6 CCR 1007-1 Part 8, Radiation Control- Radiation Safety Requirements for Radiation Generating Devices Not Used in the Healing Arts	Hazardous Materials and Waste Management Division	\$25-1.5-101(1)(k) & (l), \$25-11-103 & 104, \$25-1-108, C.R.S.	May 2018	Y	N	N	Pending
5 CCR 1002-22, Site Location and Design Approval Regulations for Domestic Wastewater Treatment Works	Water Quality Control Division	\$25-8-202 and 702, C.R.S.	May 2018	Y	N	N	Pending
5 CCR 1002-86, Graywater Control Regulation	Water Quality Control Division	\$25-8-205, C.R.S.	May 2018	Y	N	N	Pending

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	Statutory or Other Basis	Month of Review Completion	Did review result in revisions to regulation?	Did the review result in repeal of any part of the regulation?	Did review result in repeal of entire CCR volume?	Adoption date (if applicable)
5 CCR 1006-1, Vital Statistics	Center for Health and Environmental Data	§25-2-103, C.R.S.	June 2018	Y	N	N	Pending
6 CCR 1014-6, Minimum Qualifications for Public Health Director and Minimum Qualifications for Medical Officer	Office of Planning and Partnership	§25-1-503, C.R.S.	June 2018	N	N	N	N/A
6 CCR 1014-7, Core Public Health Services	Office of Planning and Partnership	§25-1-503, C.R.S.	June 2018	Y	Y	N	Pending
6 CCR 1014-9, Colorado Minimum Quality Standards for Public Health Services	Office of Planning and Partnership	§25-1-503, C.R.S.	June 2018	Y	Y	Y	Pending
6 CCR 1014-10, Local Public Health Funding Formula	Office of Planning and Partnership	§25-1-503, C.R.S.	June 2018	N	N	N	N/A
6 CCR 1007-1 Part 6, Radiation Control- X-ray Imaging in the Healing Arts	Hazardous Materials and Waste Management Division	§25-1.5-101(1)(k) & (l), §25-11-103 & 104, §25-1-108, C.R.S.	July 2018	Y	Y	N	Pending
6 CCR 1011-1, Chapter 2, General Licensure Standards	Health Facilities and Emergency Medical Services Division	§25-1.5-103 and §25-3-101, §25-3-103, C.R.S.	July 2018	Y	Y	N	Pending

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	Statutory or Other Basis	Month of Review Completion	Did review result in revisions to regulation?	Did the review result in repeal of any part of the regulation?	Did review result in repeal of entire CCR volume?	Adoption date (if applicable)
6 CCR 1014-3, Cleanup of Methamphetamine Laboratories	Hazardous Materials and Waste Management Division	§25-18.5-102, C.R.S.	September 2018	N	N	N	N/A
6 CCR 1010-21, Colorado Wholesale Food	Division of Environmental Health and Sustainability	§25-5-409, §25-5-413, §25-5-415, §25-5-420, §25-5-426, C.R.S.	September 2018	Y	Y	N	Adopted August 15, 2018
6 CCR 1009-5, Rules and Regulations Pertaining to Preparations for a Bioterrorist Event, Pandemic Influenza, or an Outbreak by a Novel and Highly Fatal Infectious Agent or Biological Toxin	Office of Emergency Preparedness and Response	§25-1-108(c)(VI), §25-1-503, §24-33.5-703, C.R.S.	September 2018	Y	N	N	Pending
6 CCR 1007-1 Part 13, Radiation Control- Compliance Enforcement	Hazardous Materials and Waste Management Division	§25-1.5-101(1)(k) & (l), §25-11-103 & 104, §25-1-108, C.R.S.	September 2018	Y	Y	N	Pending
6 CCR 1007-1 Part 7, Radiation Control- Use of Radionuclides in the Healing Arts	Hazardous Materials and Waste Management Division	§25-1.5-101(1)(k) & (l), §25-11-103 & 104, §25-1-108, C.R.S.	September 2018	Y	Y	N	Pending

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	Statutory or Other Basis	Month of Review Completion	Did review result in revisions to regulation?	Did the review result in repeal of any part of the regulation?	Did review result in repeal of entire CCR volume?	Adoption date (if applicable)
6 CCR 1011-1, Chapter 4, General Hospitals	Health Facilities and Emergency Medical Services Division	§25-1.5-103 and §25-3-101, §25-3-103, C.R.S.	September 2018	Y	Y	N	Pending
6 CCR 1011-1, Chapter 9, Community Clinics and Community Clinics and Emergency Centers	Health Facilities and Emergency Medical Services Division	§25-1.5-103 and §25-3-101, §25-3-103, C.R.S.	September 2018	Y	Y	N	Pending
6 CCR 1011-1, Chapter 19, Hospital Units	Health Facilities and Emergency Medical Services Division	§25-1.5-103 and §25-3-101, §25-3-103, C.R.S.	September 2018	Y	N	N	Pending
6 CCR 1011-1, Chapter 18, Psychiatric Hospitals	Health Facilities and Emergency Medical Services Division	§25-1.5-103 and §25-3-101, §25-3-103, C.R.S.	September 2018	Y	Y	N	Pending
5 CCR 1001-1, Procedural Rules Regulation	Air Quality Control Commission	§25-7-105 through 110, C.R.S.	October 2018	Y	N	N	Pending
5 CCR 1001-11, Regulation No. 9 Open Burning, Prescribed Fire, and Permitting	Air Pollution Control Division	§25-7-105 through 110, C.R.S.	October 2018	Y	N	N	Pending
5 CCR 1001-13, Regulation No. 11 Motor Vehicle Emissions	Air Pollution Control Division	§25-7-105 through 110; §42-301 through -306 C.R.S.	October 2018	N	N	N	N/A

Rule Number (CCR) and Title (or Description)	Division/ Board/ Program	Statutory or Other Basis	Month of Review Completion	Did review result in revisions to regulation?	Did the review result in repeal of any part of the regulation?	Did review result in repeal of entire CCR volume?	Adoption date (if applicable)
5 CCR 1001-17, Regulation No. 15 Control of Emissions from Ozone Depleting Compounds	Air Pollution Control Division	§25-7-105 through 110, C.R.S.	October 2018	N	N	N	N/A
5 CCR 1002-33 and 37, Classifications and Numeric Standards for the Upper and Lower Colorado River Basins	Water Quality Control Division	§25-8-203 and 204, C.R.S.	November 2018	Y	N	N	Pending
5 CCR 1003-2 - Water and Wastewater Facility Operator Certification Requirements	Water Quality Control Division	Water and Wastewater Facility Operators Certification Requirements	November 2018	Y	N	N	Pending

## **Departmental Regulatory Agendas**

### **Department**

Department of Personnel and Administration

# 2019

## Regulatory Agenda

January 1, 2019 - December 31, 2019



**COLORADO**  
Department of Personnel  
& Administration

## Overview

The Colorado Department of Personnel & Administration submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in Colo. Rev. Stat. §2-7-203(4). Pursuant to state law, annually on November 1 executive-branch agencies must file a Departmental Regulatory Agenda (DORA) containing:

- A list of new rules or amendments that the department or its divisions expect to propose in the next calendar year;
- The statutory or other basis for adoption of the proposed rules;
- The purpose of the proposed rules;
- The contemplated schedule for adoption of the rules;
- An identification and listing of persons or parties that may be affected positively or negatively by the rules; and
- A list and brief summary of all permanent and temporary rules adopted since the previous DRA was filed.

The Regulatory Agenda also includes, pursuant to Colo. Rev. Stat. §24-4-103.3, rules to be reviewed as part of the Department's "Regulatory Efficiencies Reviews" during 2018 (which are denoted as such in the "purpose" column). The DRA is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on the department's web site, and submitted to the Secretary of State for publication in the Colorado Register. Each department must also present its DRA as part of its "SMART Act" hearing and presentation pursuant to Colo. Rev. Stat. §2-7-203(2)(a)(II).

The following constitutes Department of Personnel & Administration's Regulatory Agenda for 2019 and is provided in accordance with Colo. Rev. Stat. §2-7-203(4):



Schedule	Rule Number	Rule Title	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders <i>Consider including high-level outreach bullets</i>
Anticipated hearing or adoption date			If only a part of a CCR is repealed, it should be classified as “revised”	Statutory authority		Categories of stakeholders, not individual stakeholders
December 2018	1 CCR 101-6	State Controller’s Accounts Receivable and Collections Rule	Revised	5-12-102, 24-30-201(1)(j), 24-30-202.4, 24-30-202.7, 24-35-601 through 24-35-607, 39-21-108	Update collections and accounts receivable rules to comport with contemporary practices	State financial officers, accounts receivable managers, debtors to the State of Colorado, collections services clients, private collection bar
February 2019	1 CCR 103-1	Central Services Rules	Revised	24-30-1101(1)(a)	Enforce brandCO standards, and compliance with reporting requirements	State employees, public information officers, content managers, service end-users
January 2019	1 CCR 104-3	Admin. Courts Procedural Rules for Workers’ Compensation Hearings	Revised	24-30-1001	Anticipated need for Worker’s Compensation rule changes	Beneficiaries of Worker’s Comp, State agencies, risk managers, employers, workers compensation bar
March 2019	4 CCR 801 Ch 3, 4, 5, and 11	Personnel Director’s Administrative Procedures	Revised	Art. XII, section 13 Colo. Const.	Standardize practices, modify FML, and modify for deployment of HRWorks	State employees, state personnel professionals, employment bar, employee partner groups

## **Departmental Regulatory Agendas**

### **Department**

Department of Education

## 2018-19 Regulatory Agendas for State Board of Education and Division of Capital Construction

### State Board of Education Regulatory Agenda

Basis for Adoption	Purpose	Rule	Technical vs. Policy Change	Notice Date	Hearing Date	Tentative Adopt Date	Parties Potentially Affected	Adopt Date
HB 18-1379	Changes to ELPA funding formula	1 CCR 301-10 RULES FOR THE ADMINISTRATION OF THE ENGLISH LANGUAGE PROFICIENCY ACT	Technical	June 2018	Aug 2018	Aug 2018	School districts; schools	
Expiration of emergency rules	Update award amounts	1 CCR 301-100 RULES FOR THE ADMINISTRATION OF THE TEACHER GRANTS FOR COMPUTER SCIENCE EDUCATION PROGRAM	Technical	June 2018	Aug 2018	Aug 2018	Teachers; school districts; schools	
OLLS	Fix incorporation of Colorado School Counselor Standards reference	1 CCR 301-101 RULES FOR THE ADMINISTRATION OF EDUCATOR LICENSE ENDORSEMENTS	Technical	Aug 2018	Oct 2018	Oct 2018	Teachers; school districts; schools	
HB 18-1269	Update list of statutes that cannot be waived	1 CCR 301-35 RULES FOR THE ADMINISTRATION OF THE WAIVER OF STATUTE AND RULE	Technical	Aug 2018	Oct 2018	Oct 2018	Schools; school districts	
HB 18-1393	Update based on statutory changes to the application process and eligibility	1 CCR 301-90 RULES FOR ADMINISTRATION OF EARLY LITERACY GRANT PROGRAM	Technical	Aug 2018	Oct 2018	Oct 2018	School districts; schools	
HB 18-1286	Rules on documentation required to administer medical marijuana	1 CCR 301-68 RULES FOR STUDENT POSSESSION AND ADMINISTRATION OF ASTHMA, ALLERGY AND ANAPHYLAXIS MANAGEMENT MEDICATIONS OR OTHER PRESCRIPTION MEDICATIONS	Policy Change	Sept 2018	Nov 2018	Nov 2018	Students; parents; schools; school districts; school nurses	
HB 18-1412	Creation of Retaining Teachers Grant Program	<b>NEW</b> 1 CCR 301-102 RULES FOR THE ADMINISTRATION OF THE RETAINING TEACHERS GRANT PROGRAM	Policy Change	Sept 2018	Nov 2018	Nov 2018	Teachers; school districts; schools	

## 2018-19 Regulatory Agendas for State Board of Education and Division of Capital Construction

Basis for Adoption	Purpose	Rule	Technical vs. Policy Change	Notice Date	Hearing Date	Tentative Adopt Date	Parties Potentially Affected	Adopt Date
HB 18-1355	Update School Turnaround Leaders Grant Program to School Transformation Grant	1 CCR 301-95 RULES FOR THE ADMINISTRATION OF THE SCHOOL TURNAROUND LEADERS DEVELOPMENT PROGRAM	Technical	Sept 2018	Nov 2018	Nov 2018	Students; teachers; parents; schools; school districts	
HB 18-1309	Update definitions/eligibility for School Counselors Grant Program	1 CCR 301-74 ADMINISTRATION OF THE SCHOOL COUNSELOR CORPS GRANT PROGRAM	Technical	Nov 2018	Jan 2019	Feb 2019	School districts; schools	
HB 18-1309; OLLS	Update definitions/eligibility for School Health Professionals Grant Program	1 CCR 301-97 RULES FOR THE ADMINISTRATION OF THE SCHOOL HEALTH PROFESSIONAL GRANT PROGRAM	Technical	Nov 2018	Jan 2019	Feb 2019	School districts; schools	
HB 18-1355; SB 17-272; HB 18-1019; SB 18-012	Comprehensive amendments based on new legislation	1 CCR 301-1 RULES FOR THE ADMINISTRATION OF THE ACCREDITATION OF SCHOOL DISTRICTS	Policy Change	Jan 2019	March 2019	April 2019	Students; parents; teachers; schools; school districts	
HB 18-1355	Comprehensive amendments based on new legislation	1 CCR 301-72 RULES FOR THE LONGITUDINAL ANALYSIS OF STUDENT ASSESSMENTS	Policy Change	Jan 2019	March 2019	April 2019	Students; parents; teachers; schools; school districts	
HB 18-1396	New AP Exam Fee Grant Program	<b>NEW</b> 1 CCR 301-103 RULES FOR THE ADMINISTRATION OF THE AP EXAM FEE PROGRAM	Policy Change	Jan 2019	March 2019	March 2019	Students; parents; schools; school districts	

## 2018-19 Regulatory Agendas for State Board of Education and Division of Capital Construction

Basis for Adoption	Purpose	Rule	Technical vs. Policy Change	Notice Date	Hearing Date	Tentative Adopt Date	Parties Potentially Affected	Adopt Date
HB 18-1306	New Educational Stability Grant Program	<b>NEW</b> 1 CCR 301-104 RULES FOR THE ADMINISTRATION OF THE EDUCATIONAL STABILITY GRANT PROGRAM	Policy Change	Jan 2019	March 2019	March 2019	Students; parents; schools; school districts	
HB 18-1309; SB 18-229	Update to include Teacher of Record License, Ed Interpreter Authorization, Special Services Quality Standards, Principal Licensure Standards	1 CCR 301-37 RULES FOR THE ADMINISTRATION OF THE EDUCATOR LICENSING ACT OF 1991	Policy Change	Feb 2019	April 2019	April 2019	Teachers; schools; school districts	
HB 18-1309	New Grow Your Own Grant Program rules	<b>NEW</b> 1 CCR 301-105 RULES FOR THE ADMINISTRATION OF THE GROW YOUR OWN EDUCATOR GRANT PROGRAM	Policy Change	Feb 2019	April 2019	April 2019	Teachers; schools; school districts	
SSP and principal evaluations	Update provisions related to SSPs and principals	1 CCR 301-87 RULES FOR THE ADMINISTRATION OF A STATEWIDE SYSTEM TO EVALUATE THE EFFECTIVENESS OF LICENSED PERSONNEL EMPLOYED BY SCHOOL DISTRICTS AND BOARDS OF COOPERATIVE EDUCATION SERVICES	Policy Change	Feb 2019	April 2019	April 2019	Schools; school districts; teachers	
HB 18-225	Establish criteria and hearing process for early colleges	<b>NEW</b> 1 CCR 301-106 RULES FOR THE ADMINISTRATION OF EARLY COLLEGES	Policy Change	Feb 2019	April 2019	May 2019	Students; parents; schools; school districts	

## 2018-19 Regulatory Agendas for State Board of Education and Division of Capital Construction

Basis for Adoption	Purpose	Rule	Technical vs. Policy Change	Notice Date	Hearing Date	Tentative Adopt Date	Parties Potentially Affected	Adopt Date
Educator Interpreter	Potential addition of the educator interpreter endorsement	1 CCR 301-101 RULES FOR THE ADMINISTRATION OF EDUCATOR LICENSURE ENDORSEMENTS	Policy Change	March 2019	May 2019	May 2019	Students; teachers; parents; school districts; schools	
HB 18-1393	Update based on new statutory requirements	1 CCR 301-92 RULES FOR THE ADMINISTRATION OF THE COLORADO READING TO ENSURE ACADEMIC DEVELOPMENT ACT (READ ACT)	Technical	March 2019	May 2019	May 2019	Students; teachers; parents; school districts; schools	

## 2018-19 Regulatory Agendas for State Board of Education and Division of Capital Construction

### Division of Capitol Construction Regulatory Agenda

Basis for Adoption	Purpose	Rule	Notice Date	Hearing Date	Tentative Adopt Date	Parties Potentially Affected	Adopt Date
HB 18-1277	Rules must be amended to include provisions from new legislation	1 CCR 303-3 BUILDING EXCELLENT SCHOOLS TODAY GRANT PROGRAM	Sept 2018	Jan 2019	Jan 2019	Schools; school districts; students	

## **Departmental Regulatory Agendas**

### **Department**

Department of Transportation



# 2019

## Regulatory Agenda



## Overview

The Colorado Department of Transportation submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in Colo. Rev. Stat. §2-7-203(4). Pursuant to state law, annually on November 1 executive-branch agencies must file a Departmental Regulatory Agenda (DRA) containing:

- A list of new rules or amendments that the department or its divisions expect to propose in the next calendar year;
- The statutory or other basis for adoption of the proposed rules;
- The purpose of the proposed rules;
- The contemplated schedule for adoption of the rules;
- An identification and listing of persons or parties that may be affected positively or negatively by the rules; and
- A list and brief summary of all permanent and temporary rules adopted since the previous DRA was filed.

The Regulatory Agenda also includes, pursuant to Colo. Rev. Stat. §24-4-103.3, rules to be reviewed as part of the Department's "Regulatory Efficiencies Reviews" during 2019 (which are denoted as such in the "purpose" column). The DRA is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on the department's web site, and submitted to the Secretary of State for publication in the Colorado Register. Each department must also present its DRA as part of its "SMART Act" hearing and presentation pursuant to Colo. Rev. Stat. §2-7-203(2)(a)(II).

The following constitutes Colorado Department of Transportation's DRA for 2018-2019 and is provided in accordance with Colo. Rev. Stat. §24-7-203(4):

Schedule (Month, Year)	Rule Number and Title or Brief Description	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or other basis for adoption of rule	Part of Mandatory Rule Review? (X if yes)	Purpose	Stakeholders <i>Consider including high-level outreach bullets</i>	Anticipated Hearing Date
March 2019	Rules Regarding Travel Restrictions on State Highways, 2 CCR 601-14	Transportation Commission	Revision	Section 42-4-106(5)(VII)(b), C.R.S.	Yes	The Rules are being revised to clarify when chains and certain tires are required on during inclement weather.	The traveling public and commercial motor vehicles who travel on state highways during inclement weather.	May 2019
March 2019	Law Enforcement Assistance Fund	CDOT Executive Director	Revision	Section 43-4-403, C.R.S.	Yes	CDOT will bring these rules up to date with minor non-substantive changes.	Colorado municipalities, city and counties, and counties and law	May 2019

Schedule (Month, Year)	Rule Number and Title or Brief Description	Division/ Board/ Program	New rule, revision, or repeal?	Statutory or other basis for adoption of rule	Part of Mandatory Rule Review? (X if yes)	Purpose	Stakeholders <i>Consider including high-level outreach bullets</i>	Anticipated Hearing Date
	(LEAF), 2 CCR 601-21						enforcement who may qualify for funding through this program.	
May 2019	State Highway Utility Accommodation Code, 2 CCR 601-18	Transportation Commission	Revision	Sections 43-1- 225(1) and 43- 1-106(8)(k), C.R.S.	Yes	This rule-making will update the rules in their entirety, making any necessary changes to reflect updated practices and legal requirements.	Utility owners statewide who seek or have obtained permits on state highway right-of- way, 811 members, professional affiliations including ACEC and CCA, Colorado Public Utilities Commission.	July 2019
July 2019	Rules Governing Outdoor Advertising in Colorado, 2 CCR 601-3	Transportation Commission	Revision	Sections 43-1- 414(4) and 415, C.R.S.	No	The rule-making will address any changes or improvements in processes and seek to simplify the existing rules.	Owners of outdoor advertising devices and applicants who seek permits from the Department to maintain or erect an outdoor advertising device as well as members of the public who have an interest in outdoor advertising.	December 2019

## **Departmental Regulatory Agendas**

### **Department**

Department of Labor and Employment

# 2019

## Regulatory Agenda

January 1, 2019-December 31, 2019



**COLORADO**  
Department of  
Labor and Employment

## Overview

The Colorado Department of Labor and Employment submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in Colo. Rev. Stat. §2-7-203(4). Pursuant to state law, annually on November 1 executive-branch agencies must file a Departmental Regulatory Agenda (DRA) containing:

- A list of new rules or amendments that the department or its divisions expect to propose in the next calendar year;
- The statutory or other basis for adoption of the proposed rules;
- The purpose of the proposed rules;
- The contemplated schedule for adoption of the rules;
- An identification and listing of persons or parties that may be affected positively or negatively by the rules; and
- A list and brief summary of all permanent and temporary rules adopted since the previous DRA was filed.

The Regulatory Agenda also includes, pursuant to Colo. Rev. Stat. §24-4-103.3, rules to be reviewed as part of the Department’s “Regulatory Efficiencies Reviews” during 2017 (which are denoted as such in the “purpose” column). The DRA is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on the department’s web site, and submitted to the Secretary of State for publication in the Colorado Register. Each department must also present its DRA as part of its “SMART Act” hearing and presentation pursuant to Colo. Rev. Stat. §2-7-203(2)(a)(III)(A).

The following constitutes Department of Labor and Employment’s Regulatory Agenda for 2017-2018 and is provided in accordance with Colo. Rev. Stat. §24-7-203(2)(a)(IV):

Schedule	Rule Number	Rule Title	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders <i>Consider including high-level outreach bullets</i>	List of all rules adopted since previous DRA was filed
Anticipated Hearing or Adoption Date							
June 2019	7 CCR 1101-2	Worker Classification Investigations and Fines	Rev	8-72-114(3)	To allow a monetary penalty to be assessed upon the first finding of an employee	Employers and workers, business associations, advocacy groups, labor and union organizations	

					misclassification and any time after should that misclassification continue.		
June 2019	7 CCR 1101-2	24-Hour Rule	Rev	8-72-108, 8-74-101 to 8-74-109, 8-76-103 (4), 8-76-113, and 8-80-102	To require parties to pre-register for their hearing in advance this will allow us to be more able to predict what coverage we have for hearings in advance. This will allow us to increase scheduling and assist with staffing shortages.	Claimants, employers, business representatives, attorneys, and third party administrators	
June 2019	7 CCR 1101-2	Phone Hearings	Rev	8-72-108, 8-74-101 to 8-74-109, 8-76-103 (4), 8-76-113, and 8-80-102	To allow the chief hearing officer or their designee to determine the method by which parties can participate in a hearing.	Claimants, employers, business representatives, attorneys, and third party administrators	
June 2019	7 CCR 1101-2	Filing a Continued Claim	Rev	8-70-111 (2)(a), 8-70-112, 8-73-107 (1)(a)(b)(e)(h), and 8-74-101 (1)	To allow a return to a seven-day filing threshold for continued claims to decrease delays in the payment of benefits.	Employers and workers, business associations, advocacy groups, labor and union organizations	
Oct 2019	7 CCR 1101-2	Definition of Remuneration	Rev	8-73-110	To further define the types of payments other than wages are included in additional remuneration received because	Employers and workers, business associations, advocacy groups, labor and union organizations	

					of a separation		
Jan 2019	7 CCR 1101-3 R3	Insurance Coverage	Rev	8-47-107	Update rule to reflect statutory changes	Insurers, self-insured employers, medical providers, claimants	
March 2019	7 CCR 1101-3 R2.5	Surcharge Rate	Rev	8-44-112	Mandatory Review		
July 2019	7 CCR 1101-3 R17	Medical Treatment Guidelines	Rev	8-42-101 (3)	Mandatory Review	Ongoing medical policy advisory panel (fee schedule)	
November 2019	7 CCR 1101-3 R16 & 18	Utilization Standards and Medical Fee Schedule	Rev	8-42-101	Mandatory Review	Ongoing medical policy advisory panel	
Ongoing	7 CCR 1101-3	General Rule Review	Rev	8-47-107	Eliminate red tape, clarify rules, improve efficient operation of the workers' compensation system	Task force meetings with impacted stakeholders	
1/1/19	7 CCR 1103-1	Colorado Minimum Wage Order Number 35	Rev	8-1-107(2)(p), 8-6-1-6, 8-6-108(2), 8-6-109	MWO 35 will adjust the Colorado state minimum wage rate to \$11.10 per hour required by the Colorado Constitution. It will also incorporate the \$3.02 minimum wage offset for employees who regularly receive tips	Labor and union organizations, non-profit organizations, advocacy groups, Wage Theft Task Force, national and local law firms and bar associations, universities, business associations and organizations, internal state agencies	
2/14/19	7 CCR 1103-8	Audit investigations	New	8-1-101, 8-4-101	To institute a new audit investigations process within the division, in	Labor and union organizations, non-profit organizations, advocacy groups, Wage Theft Task Force, national and local law firms and bar associations,	



					response to the directives outlines in Executive Order B2018 003, which created the Joint Enforcement Task Force on Payroll Fraud and Employee Misclassification in the Construction Industry	universities, business associations and organizations, internal state agencies	
November 2019 (Anticipated Hearing Date)	7 CCR 1103-1	Colorado Minimum Wage Order Number 36	Rev	8-1-107(2)(p), 8-6-1-6, 8-6-108(2), 8-6-109	MWO 36 will adjust the Colorado state minimum to \$12.00 an hour as required by the Colorado constitution. It will also incorporate a \$3.02 minimum wage offset for employees who regularly receive tips.	Labor and union organizations, non-profit organizations, advocacy groups, Wage Theft Task Force, national and local law firms and bar associations, universities, business associations and organizations, internal state agencies	7 CCR 1103-1 Colorado Minimum Wage Order Number 35
April 2019	7 CCR 1105-1 Vol 9	Vendor Certification	Rev	SB18-145, 8-84-106(3)(b)(III.5)	Require vendors of supported employment services to obtain a nationally recognized training certificate.	Recipients of VR services, vendors, consumer advocacy groups, parents/guardians of recipients of services, employers, State Rehabilitation Council	
January 2019	7 CCR 1101-8	Conveyance Regulations	Rev	CRS 98-5.5	Add new definitions, clarify existing requirements, amend	Conveyance owners, contractors, inspectors, mechanics, interested citizens	

					enforcement language		
February 2019	New rule Underground Damage Prevention Safety Commission	Oil & Public Safety	New	CRS 9-1.5	Develop new rules primarily pertaining to enforcement of violations	Utility Notification Center of Colorado, excavators, underground facility owners	
May 2019	7 CCR 1101-14	Storage Tank Regulation	Rev	CRS 8-20-102, 820.5-202, 820.5-302	Installer certifications and installation inspection procedures	Owners, operators, consultants and industry specialists	

## **Departmental Regulatory Agendas**

### **Department**

Department of Human Services

# 2019

## Regulatory Agenda

January 1, 2019-December 31, 2019



**COLORADO**  
Department of Human Services

# Overview

The Colorado of Human Services submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in Colo. Rev. Stat. §2-7-203(4). Pursuant to state law, annually on November 1 executive-branch agencies must file a Departmental Regulatory Agenda (DRA) containing:

- A list of new rules or amendments that the department or its divisions expect to propose in the next calendar year;
- The statutory or other basis for adoption of the proposed rules;
- The purpose of the proposed rules;
- The contemplated schedule for adoption of the rules;
- An identification and listing of persons or parties that may be affected positively or negatively by the rules; and

The Regulatory Agenda also includes, pursuant to Colo. Rev. Stat. §24-4-103.3, rules to be reviewed as part of the Department’s “Regulatory Efficiencies Reviews” during 2017 (which are denoted as such in the “purpose” column). The DRA is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on the department’s web site, and submitted to the Secretary of State for publication in the Colorado Register. Each department must also present its DRA as part of its “SMART Act” hearing and presentation pursuant to Colo. Rev. Stat. §2-7-203(2)(a)(III)(A).

The following constitutes Department of Human Services’ Regulatory Agenda for 2019 and is provided in accordance with Colo. Rev. Stat. §24-7-203(2)(a)(IV):

Bill	Office / CDHS Tracking Number	CCR	Rule Title	Purpose of Proposed Rule	Statutory or other basis for adoption or change to rule	New rule, revision, or repeal?	Schedule  Anticipated Hearing or Adoption Date	Stakeholders
HB 18-1108	OCAI	12 CCR 2516-1	Colorado Commission for the Deaf, Hard of Hearing, and DeafBlind: Communication Technology Program	To update rules 100-190 to incorporate the recent enactment of HB 18-1108.	Sections 26-21-106(1)(d) & 106(3) , C.R.S.	Revision	Anticipated adoption date: May 2019	Deaf, hard-of-hearing and deafblind consumers who qualify for the program, vendors, state agencies, members of the Advocacy Coalition for Equality, Commissioners

Bill	Office / CDHS Tracking Number	CCR	Rule Title	Purpose of Proposed Rule	Statutory or other basis for adoption or change to rule	New rule, revision, or repeal?	Schedule Anticipated Hearing or Adoption Date	Stakeholders
HB 18-1108	OCAI	12 CCR 25160-1	Colorado Commission for the Deaf, Hard of Hearing, and DeafBlind: Legal Auxiliary Services	To update rules 210-300 to incorporate the recent enactment of HB 18-1108.	Section 13-90-203, C.R.S.; section 24-1-120(5)(h), C.R.S.; sections 26-21-102, 104(1), & 106(4), C.R.S.; Americans with Disabilities Act, Title II, Pub. L. 101-336, codified at 42 U.S.C. sec. 12101 et seq., and its implementing regulations	Revision	Anticipated adoption date: May 2019	Consumers/clients who are deaf, hard of hearing, and deafblind or their family members, auxiliary service providers, the Colorado State Court System, Colorado Judicial Office of Language Access, Colorado State administrative agencies, the Legal Auxiliary Services Advisory Council, the Colorado Registry of Interpreters for the Deaf, Commissioners
HB 18-11-1108	OCAI	12 CCR 25160-1	Colorado Commission for the Deaf, Blind, and DeafBlind: Grant Program	To update rules 400-480 to incorporate the enactment of HB 18-1108.	Sections 26-21-107.5 & 107.7, C.R.S.	Revision	Anticipated adoption date: May 2019	Deaf, hard-of-hearing, and deafblind individuals/communities, state agencies, past grant recipients, members of Advocacy Coalition of Equality, Commissioners
HB17-1284	OCAI	12 CCR 2518-1	APS Rule Packet #1 for FY 18-19	To update rules to address requirements for the type of APS reports that need to be screened in and investigated as a result of HB17-1284 legislative intent and also some technical clean up items	HB17-1284	Revision	Anticipated hearing date: February 2019	Count Departments of Human Services, Commission on Aging
	OCAI	12 CCR 2518-1	APS Rule Packet #2 for FY 18-19	Several APS related items that are being discussed with counties now to ensure rules reflect best APS practice	None	revision	Anticipated hearing date: April 2019	Count Departments of Human Services, Commission on Aging

Bill	Office / CDHS Tracking Number	CCR	Rule Title	Purpose of Proposed Rule	Statutory or other basis for adoption or change to rule	New rule, revision, or repeal?	Schedule Anticipated Hearing or Adoption Date	Stakeholders
SB18-254	OCYF	12 CCR 2509-5	7.400 - RESOURCES, REIMBURSEMENT, REPORTING, AND PROVIDER REQUIREMENTS	Revisions to rule set that regulates programs and services provided to youth and families to include county responsibilities, core services, Medicaid, and fees, reimbursements, and payments as mandated by SB 18-254.	N/A	Revision	Anticipated hearing date: February 2019	County departments of human or social services, licensed out-of-home care providers, and the Division of Child Welfare (DCW).
n/a	OBH	2 CCR 502-1 Section 21.400	Crisis Response System	This rule update proposal would align the Colorado Behavioral Health Crisis Response System with the changing healthcare landscape to meet the behavioral health needs of the people of Colorado.	27-60-103 C.R.S.	Revision (Lead: Camille Harding)	Anticipate adoption date: July 2019	Crisis providers; Individuals who may access behavioral health crisis services
n/a	OBH	2 CCR 502-1 Section 21.260	Credentials for facility staff responsible for the treatment of an individual on an Emergency Commitment	This rule proposal would update the regulation that "the treatment facility administrator shall designate, in writing, qualified staff to assume responsibility for accepting, evaluating, informing, and providing treatment to individuals on emergency commitment" by establishing minimum staff credentials for the "qualified staff" to ensure consistency and safety for the individuals receiving services while on an emergency commitment.	27-81 & 27-82 C.R.S.	Revision	Anticipated adoption date: October 2019	Withdrawal management facilities that provide services to individuals on emergency commitments.
n/a	OBH	2 CCR 502-1 Section 21.300 and 21.320	Establish the Office of Behavioral Health's Role in regulating Office-Based Opioid Treatment (OBOT) Providers	Establish clear regulations that confirm Office-Based Opioid Treatment (OBOT) provider do not need an OBH controlled substance license.	27-80-200 C.R.S.	New Rule (Lead: Mandy Malone)	Anticipated adoption date: August 2019	Office-Based Opioid Treatment (OBOT) providers
n/a	OBH	2 CCR 502-1 Section 21.240	DUI Education and Treatment Service Provisions	This rule revision proposal would clarify service provisions for agencies providing DUI education and treatment.	42-4-1301.3 C.R.S.	Revision (Lead: Christine Flavia)	Anticipated adoption date: August 2019	DUI education and treatment providers

Bill	Office / CDHS Tracking Number	CCR	Rule Title	Purpose of Proposed Rule	Statutory or other basis for adoption or change to rule	New rule, revision, or repeal?	Schedule Anticipated Hearing or Adoption Date	Stakeholders
n/a	OBH	2 CCR 502-1 New Section	Additional Family Services	This rule proposal supports the Additional Family Services (AFS) funding stream by defining its use and eligible populations and services.	Long Bill Item	New	Anticipated adoption date: November 2019	County Departments, Managed Service Organizations, Agencies licensed and/or designated by the Office of Behavioral Health, Families involved in the Child Welfare System
n/a	OPSO/ 18-10-16-01	12 CCR 2518-1	State Level Appeals Process	The purpose of the proposed change is to allow the abandonment of APS appeals in which appellants have been nonresponsive to the State Department or cannot be contacted, without necessitating they be forwarded to the OAC to be set for hearing.	Administrative Law Judge findings from prior hearings regarding appeals	Revision	Anticipated adoption date: July 2019	ARD, appellants
n/a	OPSO/ 18-10-09-021	12 CCR 2509-4	Administrative Review	Bring rule into alignment with Federal ICWA law (25 U.S.C. Section 1912(a) and allow counties to email invitations instead of having to send via mail.	Federal law: 25 U.S.C. Section 1912(a)	Revision	Anticipated adoption date: June 2019	County Departments of Human/Social Services
n/a	OPSO/ 18-10-09-011	12 CCR 2509-2	State Level Appeals Process	The purpose of the proposed change is to allow the abandonment of CW appeals in which appellants have been nonresponsive to the State Department or cannot be contacted, without necessitating they be forwarded to the OAC to be set for hearing.	Administrative Law Judge findings from prior hearings regarding appeals	Revision	Anticipated adoption date: July 2019	ARD, appellants
n/a	OES/ 18-09-28-02	10 CCR 2506-1	Technical Cleanup of the Food Assistance Program	The purpose of the proposed changes are to simplify the Food Assistance regulations by removing duplicative sections, redundancies and clarify language.	Sections 26-2-301 & 26-2-302, C.R.S	Revision	Anticipated adoption date: March 2019	Food Assistance Clients, County Departments of Human/Social Services
n/a	OES	10 CCR 2506-1	Food Assistance Regulation Reorganization	The purpose of the proposed changes are to organize and simplify the Food Assistance regulation through a re-structure and rewrite of the rules. Rule update will include the annual cost of living adjustments for the income guidelines, benefit allotments and deductions for the FFY20.	Sections 26-2-301 & 26-2-302, C.R.S	Revision	Anticipated adoption date: October 2019	Food Assistance Clients, County Departments of Human/Social Services



Bill	Office / CDHS Tracking Number	CCR	Rule Title	Purpose of Proposed Rule	Statutory or other basis for adoption or change to rule	New rule, revision, or repeal?	Schedule Anticipated Hearing or Adoption Date	Stakeholders
n/a	OCYF	12 CCR 2509-2, 7.103	Jurisdiction/RED team	The purpose of the proposed rules are to clarify and simplify jurisdiction rules and RED team Initial Response rules.	Rules are a result of the Child Protection Task Group	Revision	Anticipated adoption date: June 2019	County Departments of Human/Social Services CW staff
n/a	OCYF	12 CCR 2509-2 7.104	Safety/Risk assessment	The purpose is to clarify and simplify rules regarding use of the Colorado Family Safety and Risk Assessment tools	The Colorado Family Safety and Risk Assessment tools have been in use for two years and an evaluation of rules has identified areas needing clarification and simplification	Revision	Anticipated adoption date: June 2019	County Departments of Human/Social Services CW staff; ARD
n/a	OES	09-CCR-2503-7	LEAP Annual rule updates	To update any LEAP rule for the upcoming 2019-2020 heating season which includes income guidelines, flat rate standards and other rule updates required for program year starting 11/1/2019	Sections 26-2-122.5, 40-8.5-101,40-8.7-101,40-8.7-109 & 40.87-112(1), CRS	Revision	Anticipated adoption date: October 2019	County/Contractor LEAP Departments, LEAP Clients
n/a	OES/FEAD	10 CCR 2506-1	Electronic Benefit Transfer System (EBTS) Rule Reorganization and Clean-up	The purpose of the proposed rule changes are to organize and simplify the EBT regulations through a rewrite and a restructure of the rules.	Federal Rule: 274.1-274.8	Revision	Anticipated adoption date: December 2019	CDHS Clients, County Department of Human/Social Services
N/A	OES/18-09-17-01	9 CCR 2503-6	Colorado Works Payments for Parents with Shared Custody	Purpose of this proposed rule is to allow a non-custodial parent with partial custody of a child to receive TANF benefits and services to support the child. Example: A father has child(ren) 1 night per weekend yet mother is on TANF claiming the children. Dad will be allowed to collect benefits has a household of 1 to serve the child.	Federal flexibility allows this to be state determined	Revision/New	Dependent on work group timeframes	County partners and advocates.
N/A	OES/18-09-25-01	9 CCR 2503-5	Adult Financial Updates	The purpose of this rule will be to review the Adult Financial programs, modernize language, and align requirements with other programs where possible and appropriate. Will also be folding in 9 CCR 2503-8 into this rule and repealing that section in entirety.	These modifications are allowable through Statutory authority.	Revision/Repeal	Dependent on work group and automated system timeframes	County partners and advocates.
N/A	OES	9 CCR 2503-8	Repeal 9 CCR 2503-8	Repealing rule and incorporating into 9 CCR 2503-5.	These modifications are allowable through Statutory authority.	Repeal	Dependent on work group and automated system timeframes	County partners and advocates.

Bill	Office / CDHS Tracking Number	CCR	Rule Title	Purpose of Proposed Rule	Statutory or other basis for adoption or change to rule	New rule, revision, or repeal?	Schedule Anticipated Hearing or Adoption Date	Stakeholders
N/A	OES	9 CCR 2503-6	Colorado Works Updates	The purpose of this rule will be to review the Colorado Works program, modernize language, and align requirements with other programs where possible and appropriate.	These modifications are allowable through Statutory authority.	Revision	Dependent on work group and automated system timeframes	County partners and advocates.
N/A	OES	9 CCR 2503-5	Old Age Pension and Aid to the Needy Disabled Colorado Supplement Cost of Living Adjustment Increase for 2020	Implement the annual Cost of Living Adjustment for applicable Adult Financial programs.	These modifications are allowable through Statutory authority.	Revision	Anticipated adoption date: November 2019	County partners and advocates.
N/A	OES	9 CCR 2503-3	Colorado Refugee Services Program Updates	Update CRSP rules to ensure that rules in compliance with the Public/Private Partnership Resettlement model.	Federal flexibility allows this to be state determined	Revision	Anticipated adoption date: October 2019	CRSP Contractors, County partners
HB 18-1363 HB 18-1339	OES	9 CCR 2504-1	Child Support Commission Bill	Changes include revisions to required background checks to include fingerprinting, revisions of Deficit Reduction Act Fees and Criteria, withdrawing noticing, genetic testing, significant changes to the Administrative Process Action	PL 115-123, IV-D Task Force (IWO Work Group), These modifications are allowable through Statutory authority.	Revision	Anticipated adoption date: 07/01/2019	DHS Directors, County IV-D Administrators, Center on Fathering, Colorado Legal Services, State Child Support Services, County IV-D Attorneys, OCSE - Federal Partner Region 8, Judicial Partner (Liaison)
n/a	OCYF	12 CCR 2509-3	Adoption	The purpose is to align adoption regulations with state and federal legislation.	Child Protection Ombudsman is working to update adoption statute.	New, revision, and repeal	Anticipated adoption date: December 2019	County Departments of Human/Social Services CW staff; ARD; Child Protection Ombudsman; adoption stakeholders/advocates

Bill	Office / CDHS Tracking Number	CCR	Rule Title	Purpose of Proposed Rule	Statutory or other basis for adoption or change to rule	New rule, revision, or repeal?	Schedule  Anticipated Hearing or Adoption Date	Stakeholders
N/A	OCYF/ 18-09-27- 01	7.702.1 12 CCR 2509-3	Monthly Face to Face Contacts	Increased face to face contacts as a result of CFSR findings.	CFSR findings; statutory	New, revision, and repeal	Anticipated adoption date: January 2019	County Departments of Human/Social Services CW staff; ARD; Office of Child's Representative; Office of Respondent Parent Council

Bill	Office / CDHS Tracking Number	CCR	Rule Title	Purpose of Proposed Rule	Statutory or other basis for adoption or change to rule	New rule, revision, or repeal?	Schedule  Anticipated Hearing or Adoption Date	Stakeholders
N/A	OCYF	Various	Various areas of rule will need to be modified with the implementation of the Family First Prevention Services Act (FFPSA) over 2019.	On Feb. 9, 2018, the landmark bipartisan FFPSA was signed into law. The FFPSA includes historic reforms to help keep children and youth safely with their families and avoid the potentially traumatic experience of entering foster care, emphasizes the importance of children and youth growing up in families, and helps ensure they are placed in the least restrictive, most family-like setting appropriate to their special needs when foster care is needed. The FFPSA redirects federal funds for these purposes. Additionally, FFPSA will require Colorado to make updates to its State IV-E Plan as well as various rule changes. An analysis has been completed outlining at least 14 potential changes to rule in the following areas: 1) defining candidates for recipients of prevention services; 2) provision of prevention services; 3) services and programs deemed promising, supported, or well-supported will be eligible for federal matching payment; 4) model licensing standards for foster family homes; 5) fiscal reimbursement for Title IV-E including foster care maintenance payments and exceptions; 6) changes to the definition of residential child care facility within the Child Care Licensing Act for Qualified Residential Treatment Programs (QRTP); 7) changes to the definition of foster care home within the Child Care Licensing Act; 8) required use of an assessment tool for any child/youth placed in a QRTP; 9) requirement that a youth 14 years old or older must be a part of permanency team member identification process; 10) case plan requirements; 11) define expectations of counties to submit required information to CDHS regarding QRTP placements which is subsequently required to be reported to HHS; 12) changes to the John H. Chafee Foster Care Independence program; 13) Title IV-E amended to delay assistance without meeting an income test for children with special needs who do not reach their second birthday in the fiscal year of their adoption assistance agreement being signed; and 14) requirement for states to comply with spending Title IV-E savings.	PL 115-123, the Family First Prevention Services Act	New, revision, and repeal	Anticipated adoption date: September 2019	County Departments of Human/Social Services CW staff; ARD; Office of Child's Representative; Office of Respondent Parent Council, out of home placement providers, community service providers, OEC, Judicial,

Bill	Office / CDHS Tracking Number	CCR	Rule Title	Purpose of Proposed Rule	Statutory or other basis for adoption or change to rule	New rule, revision, or repeal?	Schedule Anticipated Hearing or Adoption Date	Stakeholders
HB 18-1335	OEC/18-10-15-01	9 CCR 2503-9	Colorado Child Care Assistance Program	To comply with state statute	A review of the Child Care Assistance Program Rules (9 CCR 2503-9) has been done pursuant to 45 CFR §98.11(b)(2) which requires Lead Agencies to promulgate all rules and regulations governing overall administration of the CCDF State Plan. Administrative Procedure Act, § 24-4-103, C.R.S., requires promulgation of rule where “the whole or any part of every agency statement of general applicability and future effect implementing, interpreting, or declaring law or policy.”	Revision, new rules being written	Anticipated adoption date: February 2019	OEC, PAC & EC SubPAC
SB 18-162	OEC/18-07-23-01		Substitute Placement Agency for Less than 24 Hour Care Facilities	Senate Bill 18-162 creating a new less than 24 hour license type was signed into law April 12, 2018 requiring the Department to promulgate a new rule set for the new license type. This package adds new rules regarding the creation of a Substitute Placement Agency.	26-6-107 C.R.S. 2017 State Board to Promulgate Rules; 26-6-106(3) C.R.S.2017 Standard for Facilities and Agencies-Rules; 26-6-103.3 (effective 8/8/18 SB18-162 was signed into law on April 13, 2018).	New	Anticipated adoption date: December 2018	Colorado Children's Campaign, Denver Early Childhood Council, Take-A-Break Child Care, Colorado Substitutes, Colorado Children's Hospital, Healthy Child Care Colorado, Early Childhood Education Association of Colorado, Arapahoe Community College Early Childhood Department Chair, Red Rocks Community College Child Care Innovations.

Bill	Office / CDHS Tracking Number	CCR	Rule Title	Purpose of Proposed Rule	Statutory or other basis for adoption or change to rule	New rule, revision, or repeal?	Schedule Anticipated Hearing or Adoption Date	Stakeholders
N/A	OCYF	7.706 26-6-101	Day Treatment	Revision and update to rules governing Day Treatments	26-6-101	Revision	Anticipated adoption date: September 2019	Day Treatment providers, HCPF, OBH, county departments of human services, CAFCA, CDE, Fostering Colorado, parents, students
SB 18-099	OEC/18-06-08-1	12 CCR 2509-8	School Readiness Quality Improvement Program	The purpose of the Colorado School Readiness Quality Improvement Program is to improve the school readiness of children, five (5) years of age or younger, who are cared for at early childhood education programs pursuant to C.R.S. Section 26-6.5-106. As a result of amendments passed through SB 18-09 revisions are required for Colorado School Readiness Quality Improvement Program rule (7.716, 12-CCR 2509-8	26-6.5-106 (4) and (7), C.R.S.	Revision	Anticipated adoption date: January 2019	Early Childhood Councils, Early Childhood Education Programs, Children and Families attending Early Childhood Education Programs

# 2018

## Regulatory Agenda REPORT

January 1, 2018-December 31, 2018



**COLORADO**  
Department of Human Services

## Overview

The Colorado Department of Human Services submits the following 2018 Regulatory Agenda Report in fulfillment of the statutory requirements set forth in Colo. Rev. Stat. §2-7-203(4), detailing the results of the past year's rules review activity.

Hearing or Adoption Date	Rule Number	Rule Title	New Rule, Revision, or Repeal?	Statutory or Other Basis for Adoption of Rule	Purpose of Proposed Rule	High-Level Stakeholders <i>Consider including high-level outreach bullets</i>	Status <i>Adopted/Not Adopted/Withdrawn/Ongoing</i>	Included on FY17 Agenda?
Hearing: 10/05/2018	2 CCR 502-1	Behavioral Health Licensure and Designation (21.120)	Revision	SB 10-175 27-65, C.R.S. (2016); 27-66, C.R.S. (2016); 27-80, C.R.S. (2016); 27-81, C.R.S. (2016); 27-82, C.R.S. (2016)	Revisions to section 21.120 will streamline and clarify the process of obtaining and maintaining a SUD license or mental health designation from the Department.	SUD Licensed and Mental Health Designated Facilities	Ongoing	Yes
Hearing: 10/05/2018	2 CCR 502-1	Incorporation by Reference and DUI Provisions	Revision	27-81-106, C.R.S. (2017); 27-82-103, C.R.S. (2017); 42-4-1301.3(3)(c)(IV) C.R.S. (2017)	The pre and posttests addressed in 21.240.5(F) and 21.240.6(A) are no longer required, because new DUI curricula have been approved, which do not require pre and posttests.	DUI Education and Treatment providers	Ongoing	Yes
Hearing: 10/05/18	2 CCR 502-1	Emergency Medical Services Facility Hold Data New Title: Data Reporting	Revision	27-65, C.R.S. (2017)	Rule changes needed to implement Mental Health Hold Task Force Recommendation 3: Establish a Tiered System for Carrying out M-1 Holds.	Designated Facilities, hospitals, advocacy organizations	Ongoing	Yes
Adopted: 6/01/2018	2 CCR 502-1	Medication Consistency in Designated	New Rule	27-70, C.R.S. (2017) (SB17-019)	The Department of Human Services in consultation with the Department of Corrections shall	Designated Facilites	Adopted	Yes



		Facilities  (2017 R.Agenda title: Medication Mental Illness In Justice Systems)			promulgate rules that require providers under each department's authority to use a medication formulary that has been developed collaboratively by departments, agencies, and providers.			
Emergency Adoption: 8/03/2018	2 CCR 502-1	Revisions to the Trails Check Requirement for Pre-Employment Screening	Revision	26-1-107, C.R.S. (2017) 26-1-109, C.R.S. (2017) 26-1-111, C.R.S. (2017) 19-1-307(2), C.R.S. (2017) 27-65-105, 107, 109, C.R.S. (2017) 27-65-128, C.R.S. (2017) 27-66-104, C.R.S. (2017) 27-80-108, C.R.S. (2017) 27-81-106, C.R.S. (2017) 27-82-103, C.R.S. (2017)	Office of Behavioral Health (OBH) rule requires all agencies licensed or designated by OBH to complete a pre-employment background investigation which includes a child abuse registry (Trails) check. Section 19-1-307(2)(k), C.R.S. authorizes Trails checks for licensed child care operators for the purpose of screening an applicant for employment, but not Trails checks requested by other CDHS licensees. Because § 19-1-307(2), C.R.S., does not authorize the pre-employment Trails checks required in OBH rules 21.160.2 and 21.200.53, those rules are void under state law. This rule change removes the requirement that OBH-licensed and designated agencies must complete a Trails check when completing a pre-employment background investigation.	Agencies licensed or designated by the Office of Behavioral Health	Adopted	No
Hearing: 12/07/2018	2 CCR 502-1	Revisions to the Trails Check Requirement for Pre-Employment Screening	Revision	26-1-107, C.R.S. (2017) 26-1-109, C.R.S. (2017) 26-1-111, C.R.S. (2017) 19-1-307(2), C.R.S. (2017) 27-65-105, 107, 109, C.R.S. (2017) 27-65-128, C.R.S. (2017)	Office of Behavioral Health (OBH) rule requires all agencies licensed or designated by OBH to complete a pre-employment background investigation which includes a child abuse registry (Trails) check. Section 19-1-307(2)(k), C.R.S. authorizes Trails checks for licensed child care operators for the purpose of screening an applicant for employment, but not Trails checks requested by other CDHS licensees. Because § 19-1-	Agencies licensed or designated by the Office of Behavioral Health	Ongoing	No

				27-66-104, C.R.S. (2017) 27-80-108, C.R.S. (2017) 27-81-106, C.R.S. (2017) 27-82-103, C.R.S. (2017)	307(2), C.R.S., does not authorize the pre-employment Trails checks required in OBH rules 21.160.2 and 21.200.53, those rules are void under state law. This rule change removes the requirement that OBH-licensed and designated agencies must complete a Trails check when completing a pre-employment background investigation.			
Adopted: 4/06/2018	12 CCR 2518-1	APS Rule Additions Related to Implementation of CAPS Checks	Repeal, Revision , New Rule	26-1-107, C.R.S. (2017) 26-1-109, C.R.S. (2017) 26-1-111, C.R.S. (2017) 26-3.1-108, C.R.S. (2017)	The program rules for the Adult Protective Services (APS) program, as authorized by Title 26, Article 3.1, C.R.S. The APS program provides protective services for at-risk adults who are experiencing mistreatment or are self-neglecting. The purpose of this proposed rule change is to update sections of the Adult Protective Services (APS) rules to reflect the changes made in recent legislation (HB15-1370, HB17-1253, and HB17-1284) and budget initiatives and to make technical corrections. The majority of changes are related to HB17-1284 which implements a process requiring employers of specific professions to conduct a background check to determine if an applicant has been substantiated in an APS case of mistreatment against an at-risk adult.	Grant applicants (community organizations, state agencies, etc.);	Adopted	Yes
Adopted: 6/01/2018	12 CCR 2518-1	Adult Protective Services Program Revisions	Revision	Section 26-3.1-111, C.R.S.(2017)	12 CCR 2518-1 are the program rules for the Adult Protective Services (APS) program, as authorized by Title 26, Article 3.1, C.R.S. The APS program provides protective services for at-risk adults who are experiencing mistreatment or are self-	-American Sign Language/English interpreters	Adopted	Yes

					neglecting. The purpose of this proposed rule change is to update sections of the Adult Protective Services (APS) rules to reflect the changes made in recent legislation (HB17-1284). HB17-1284 implements a process requiring employers of specific professions to conduct a background check to determine if an applicant has been substantiated in an APS case of mistreatment against an at-risk adult. This packet is specific to the employer background check process for requesting a background check, costs associated with the check, and returning results to the employer.			
Hearing: 10/05/2018	12 CCR 2509-10	Early Intervention Program	Revision	26-1-107, C.R.S. (2016) 26-1-109, C.R.S. (2016) 26-1-111, C.R.S. (2016) 27-10.5- 703(2), (3)(b) C.R.S. (2016) 34 C.F.R. Part 303	Revisions to clean up technical, format, and grammatical issues all at once	Community Centered Boards, providers, families of children eligible for EI	Ongoing	Yes
Hearing: 12/07/2018	12 CCR 2509-8	Rules regulating less than 24-hour Child Care Centers	Revision	26-6-106(1)(a), C.R.S. (2017) 26-6-113, C.R.S. (2017)	Align with federal requirements on background checks; add rule set for mobile preschools; modify rules for drop-in centers; technical clean up.	Child care centers; early childhood advocates	Ongoing	Yes
Hearing: 12/07/2018	12 CCR 2509-8	Colorado School Readiness Quality Improvement Program	Revision	Section 26-6.5-106, C.R.S.	With the recent passing of SB18-09 Concerning the Alignment of Early Childhood Quality Improvement Programs with the Colorado Shines Quality Rating and Improvement System, a rule revision is required for the School Readiness Quality	Early Childhood Councils; early childhood advocates	Ongoing	Yes

					Improvement Program.			
Adopted 7/06/2018	9 CCR 2503-6	Basic Cash Assistance	Revision	26-1-107, C.R.S. (2017) 26-1-109, C.R.S. (2017) 26-1-111, C.R.S. (2017)26-2- 706.6), C.R.S. (2017)	<p>Colorado Works is the State's Temporary Assistance for Needy Families (TANF) program. It provides cash assistance and employment and stabilization services to Colorado's neediest families. The value of the cash assistance benefits has eroded over time, as it is not adjusted for inflation or cost of living increases. Since its establishment in 1997, the purchasing power of Colorado's Basic Cash Assistance (BCA) grant has decreased 35%. The benefit amount was last modified slightly in 2009.</p> <p>The purpose of this change is to ensure BCA is increased to more closely align with inflation and cost of living increases.</p>	County partners and advocates	Adopted	Yes
Adopted: 7/06/2018	10 CCR 2506-1	Big rule updates: Rule Manual Volume 4B, Food Assistance	Revision	26-1-107, C.R.S. (2015) 26-1-109, C.R.S. (2015) 26-1-111, C.R.S. (2015) 7 CFR 273.10(a)(1)( iii)(B) &(C), 7 CFR 273.10(e)(2) 7 CFR 273.12(a)(5)( iii)(E) 7 CFR 273.11(e) 7 CFR 273.11(f) 7 CFR 273.9(d)(4) 7 CFR 273.8(e)	<p>The Food and Nutrition Act of 2008 incorporated a myriad of changes into federal Supplemental Nutrition Assistance Program regulations. These changes, however, were only recently codified into rule. As a result, Colorado State Food Assistance rules must now be updated to reflect the same clarifications and amendments to align with the federal program.</p>	County partners and advocates	Adopted	No

				7 CFR 273.12(c)(3) 7 CFR 272.13 7 CFR 272.14				
Emergency Adoption: 5/04/2018	10 CCR 2506-1	Updates to Broad Based Categorical Eligibility	Revision	26-1-107, C.R.S. (2015) 26-1-109, C.R.S. (2015) 26-1-111, C.R.S. (2015) 7 CFR 273.2(j)(2) 7 CFR 273.9(a) 7 CFR 273.10(e)(1) 7 CFR 273.8 7 CFR 273.2(f)(1) 7 CFR 273.12(a)(5) 7 CFR 273.12(c)	Federal Supplemental Nutrition Assistance regulations allow states the option to expand the reach of categorical eligibility (simplified eligibility processes already afforded to recipients of certain means tested public assistance programs) to a broader client base. In 2010, Colorado chose to legislate this option and effectively reduced the burden of the resource test for a broader audience. Since then, further federal clarification has been received which necessitates updating the categorical eligibility model.	County partners and advocates	Adopted	No
Adopted: 7/06/2018	10 CCR 2506-1	Updates to Broad Based Categorical Eligibility	Revision	26-1-107, C.R.S. (2015) 26-1-109, C.R.S. (2015) 26-1-111, C.R.S. (2015) 7 CFR 273.2(j)(2) 7 CFR 273.9(a) 7 CFR 273.10(e)(1) 7 CFR 273.8 7 CFR 273.2(f)(1) 7 CFR 273.12(a)(5) 7 CFR 273.12(c)	Federal Supplemental Nutrition Assistance regulations allow states the option to expand the reach of categorical eligibility (simplified eligibility processes already afforded to recipients of certain means tested public assistance programs) to a broader client base. In 2010, Colorado chose to legislate this option and effectively reduced the burden of the resource test for a broader audience. Since then, further federal clarification has been received which necessitates updating the categorical eligibility model.	County partners and advocates	Adopted	No
Emergency Adoption:	10 CCR 2506-1	Food Assistance FFY18 Standard	Revision	26-2-301 (2017),	The United States Department of Agriculture, Food and Nutrition	Food Assistance applicants and	Adopted	No

9/07/2018		Utility Allowance Updates and Cost of Living Adjustments		C.R.S. 26-2-302 (2017), C.R.S.	Service annually evaluates Federal income poverty guidelines and cost of living increases to determine appropriate adjustments to income eligibility standards, benefit allotments, and deductions for the upcoming Federal Fiscal Year. The modified figures are typically made available to states during the month of August immediately proceeding the next fiscal year.	participants		
Hearing: 12/07/2018	10 CCR 2506-1	Food Assistance Program	Revision	26-1-107, C.R.S. (2016) 26-1-109, C.R.S. (2016) 26-1-111, C.R.S. (2016) 26-2-301 (2017), C.R.S. 26-2-302 (2017), C.R.S. Agricultural Act of 2014 (Public Law 113-79)	The purpose of this revision is to modify the sequential order of this rule, and possibly update the language, so that it is easier to identify the two distinct sets of regulations within SNAP: 1) Food Assistance and 2) Employment & Training	County partners and advocates	Ongoing	No
Adopted: 7/06/2018	9 CCR 2503-5	Aid to the Needy Disabled State Only and Home Care Allowance Grant Increase	Revision	26-1-107, C.R.S. (2017) 26-1-109, C.R.S. (2017) 26-1-111, C.R.S. (2017) 26-2-111, C.R.S. (2017) 26-2-119, C.R.S. (2017) 26-2-122.3, C.R.S. (2017) 20 CFR 416 et seq.	The purpose of this rule will be to increase the grants for both the Aid to the Needy Disabled State Only (AND-SO) and Home Care Allowance (HCA) grants. Colorado State Statutue encourages the Department to increase the amount of the grant during the current fiscal years and to adjust the grant to reflect increases in the cost of living. The AND-SO grant has not been increased since January 2015 and is currently at \$189. The Department is proposing to increase this grant by \$28. The HCA grant has three tiers and the	County partners and advocates	Adopted	Yes

					Department is proposing to increase each tier by \$75. Increasing the HCA grant will help ensure the State meets the Maintenance of Effort (MOE) agreement with the Social Security Administration and avoids a non-compliance penalty of at least \$325 million quarterly.			
Adopted: 9/07/2018	9 CCR 2503-5  9 CCR 2503-8	Aid to the Needy Disabled - State Only (AND - SO) Program Rule Changes	Revision / Repeal	26-1-107, C.R.S. (2017) 26-1-111, C.R.S. (2017) 26-2-111 (4)(b.5)(II), C.R.S. (2017) 26-2-106(6)(a), C.R.S. (2017) 26-2-103 (14)(a)(b), C.R.S. (2017)	The purpose of this rule will be to review the Adult Financial programs, modernize language, align requirements with other programs where possible and appropriate. Will also be folding in 9 CCR 2503-8 into this rule and repealing that section in entirety	County partners and advocates	Adopted	Yes
Emergency Adoption	9 CCR 2503-9	Colorado Child Care Assistance Program	Revision	26-1-107, C.R.S. (2015) 26-1-109, C.R.S. (2015) 26-1-111, C.R.S. (2015) Section 26-1-107, C.R.S. Section 26-2-805, C.R.S.	The Department must set the income eligibility for the CCCAP program. The state has flexibility to set these limits, as long as they do not exceed 85% of the state median income level, as determined in the LIHEAP federal information memo. Annually, the Department updates the federal poverty levels and the state median income levels in CHATS (the automated system used by counties to administer CCCAP). Typically, the new federal poverty guidelines are released sometime in January every year, but the CCCAP program must adhere strictly to the LIHEAP State Median Income limits, which are effective every October 1. This update happens to also align with other	County human services, early childhood providers, early childhood advocates	Adopted	Yes

					federal fiscal programs that operate on the federal fiscal year (October 1) and the staggered timeframe also allows time for the OIT team to input the new federal poverty levels into the CHATS system. The Department removed the reference to actual income levels in the rule package that went into effect in February 2016, in an effort to simplify rule and reduce the need to amend the rule annually with the new income guidelines. These guidelines are now published on the OEC website and established every year through an Operational Memo to the counties. It has come to our attention that because these income guidelines are not in rule, the state is not in compliance with the Administrative Procedure Act, § 24-4-103, which requires the state to address in rule any general standard that is applied to the public (such as income eligibility for child care assistance).			
Adopted: 8/03/2018	9 CCR 2503-9	Colorado Child Care Assistance Program	Revision	26-1-107, C.R.S. (2015) 26-1-109, C.R.S. (2015) 26-1-111, C.R.S. (2015) 26-1-107 (5), (6), C.R.S. (2015) 26-1-109 (5), C.R.S. (2015)	The purpose of the changes is to: meet the Federal requirements outlined in the Child Care Development Fund, update rule to ensure that it supports the newly designed CHATS System, and to provide better rule clarity and program guidance	County human services, early childhood providers, early childhood advocates	Adopted	Yes
Adopted: 6/18/2018	2 CCR 502-5	Certified Addiction Counselor Clinical Training Program - Approved Trainer Fees	Revision	26-1-108(1.7), C.R.S. (2017), 27-80-111(1),	In order for the Office of Behavioral Health to be in compliance with Section 27-80-111, C.R.S., rules must be established by the executive director	Designated facilities	Adopted	No



				C.R.S. (2017)	for the fees to be charged for addiction counselor training. These executive director rules will formalize the fees currently established in the Certified Addiction Counselor (CAC) Clinical Training Program - OBH Approved Trainer Program.			
Adopted: 7/06/2018	12 CCR 2509-02	Social Services Rules - OVERVIEW OF CHILD WELFARE SERVICES  Rule Title: Additional Actions when a County Department has had Prior/Current Involvement	Revision	C.R.S. 26-1-139, 26-1-111, C.R.S. (2015), 26-1-109, C.R.S. (2015), 26-1-107, C.R.S. (2015)	Create clarification and additional time for the internal review and written report requirements. 26-1-139 (5) (a) states that extensions can be granted for delays outside the county's control for relevant reports. 7.106.13 (C) allows for the state department to provide an extension and includes the internal review report. 7.106.121 (B) (3) states that the written report shall be submitted within 60 calendar days of initial notification." Counties also requested that the requirement for completion of the internal review be extended.	County partners	Adopted	No
Adopted: 8/03/2018	12 CCR 2512-2	Administering Funds and Standards for Domestic Violence Advocacy Services	Revision	12.100-12.552	As part of an internal rule review process, the Domestic Violence Program (DVP) is ensuring that rules clarify requirements, reflect current best practices in the domestic violence field, and align with new federal rules.	Community-based organizations that receive funding from DVP and provide services to victims of domestic violence and their families	Adopted	No
Adopted: 9/07/2018	12 CCR 2512-2	Administering Funds and Standards for Domestic Violence Advocacy Services	Revision	12.100-12.552	To amend an error regarding an incorporation by reference for permanent rule adopted on 8/03/2018. This rule was not filed for a permanent update in the required timeline, so it will be heard for emergency status once more in December 2018. The permanent adoption for this correction will take place in January of 2019	Community-based organizations that receive funding from DVP and provide services to victims of domestic violence and their families	Adopted & Ongoing (see note in rule purpose)	No

Adopted: 8/03/2018	12 CCR 2509-8	General Rules for Child Care Facilities, Centers and Homes	Revision	26-1-107, C.R.S. (2018) 26-1-109, C.R.S. (2018) 26-1-111, C.R.S. (2018) 26-6- 106(1)(a), C.R.S. (2017) 26-6-113, C.R.S. (2018)	The Child Care and Development Block Grant (CCDBG) Act statutorily requires that States which receive funds implement the requirements of the CCDBG Act Sec. 658H Criminal Background Checks. The Department is statutorily mandated to have in effect requirements, policies, and procedures to require and conduct criminal background checks for child care staff members, as well as, licensing, regulation, and registration requirements that prohibit the employment of child care staff members with disqualifying crimes. This change adds requirements as required by the CCDBG Act that must be effective by September 30, 2018.	Designated facilities, county partners	Adopted	No
Hearing: 10/05/2018	12 CCR 2509-6	Increasing Capacity in Foster Care Homes and Technical Changes	Revision		The Family First Prevention Services Act (2018) defined a foster care home in Section 472 [U.S.C. 672] (c) (1) (i) (ii) (III). Requirements include: a foster care home is located in the state of residence and meets the state's standards; a child/youth has been placed in the care of and resides in the home with the foster parents, and provides care for no more than six (6) children/youth, though states have discretion for exceptions for specific populations. The Act promotes placing children/youth in foster care homes because they are family settings and less restrictive than congregate care. Placements in group homes, group centers, and residential child care facilities will be subject to new/more stringent	Children/youth, foster parents, county departments of human/social services, and child placement agencies (CPAs), Group homes, group centers, and RCCFs serving six (6) or fewer children	Ongoing	No

					<p>restrictions and requirements. Group homes are generally a home with supervision by group home parent(s), though they may have staff. Group centers may be in a home or a free standing building and have rotating staff. Both facilities may serve 3-12 children/youth.</p> <p>The state/counties will need to provide specific documentation and assessment in order to justify federal reimbursement for group homes, group centers and residential child care facilities (RCCFs). These facilities will be required to provide services to specific populations, have ongoing assessment and reviews to determine the appropriateness of the placement, and to assure that it is the least restrictive for the child/youth.</p> <p>The Policy Advisory Committee (PAC) recommended that the maximum capacity of foster care homes be increased from four (4) to six (6) children/youth in foster care through a rule change.</p> <p>The intent is to increase capacity in foster care homes in order to provide additional choices for placement in a foster care home and based on the needs of the child/youth and the skill sets of the foster parent(s). It may also allow for children/youth that are in congregate care (group homes, group centers, and RCCFs) to step-down to a traditional foster care home.</p> <p>Technical changes are included in the Receiving Home rules for</p>			
--	--	--	--	--	--	--	--	--

					clarification and to align language with the change in capacity for traditional foster care homes.			
Adopted: 1/05/2018	12 CCR 2509-2	Referral and Assessment	Revision , New Rule	26-1-107, C.R.S. (2015) 26-1-109, C.R.S. (2015) 26-1-111, C.R.S. (2015) 26-1-111, C.R.S. (2015)	To clarify assessment rule, through revision and additional rule to align with changes and updates to current practice.	County Partners, Hotline County Connection Center	Adopted	No
Adopted: 7/06/2018	12 CCR 2509-2	Additional Actions when a County Department has had Prior/Current Involvement	Revision	26-1-107, C.R.S. (2015) 26-1-109, C.R.S. (2015) 26-1-111, C.R.S. (2015) C.R.S. 26-1-139	Create clarification and additional time for the internal review and written report requirements. 26-1-139 (5) (a) states that extensions can be granted for delays outside the county's control for relevant reports. 7.106.13 (C) allows for the state department to provide an extension and includes the internal review report. 7.106.121 (B) (3) states that the written report shall be submitted within 60 calendar days of initial notification." Counties also requested that the requirement for completion of the internal review be extended.	County Partners	Adopted	No
Adopted: 1/05/2018	12 CCR 2509-8	Child Care Facility Licensing	Revision	26-1-107, C.R.S. (2016) 26-1-109, C.R.S. (2016) 26-1-111, C.R.S. (2016) 26-6-113, C.R.S. (2016) 26-6-105, C.R.S. (2016) 26-6-106(3) C.R.S. (2016) 26-1-107, C.R.S. (2016) 26-1-109,	State statute at section 26-6-105(1)(c) (2016) requires that the department review and assess the direct and indirect costs associated with child care inspections and licensing on an annual basis. This statute also requires that the department implement an objective and systematic approach for setting licensing fees. A revised cost analysis has been developed to inform both the direct and indirect costs of processing applications and annual licensing inspections, by license type and	Designated providers, facilities and agencies	Adopted	No

				C.R.S. (2016) 26-6-113, C.R.S. (2016) 26-6-105, C.R.S. (2016) 26-6-106(3) C.R.S. (2016)	licensed capacity. The proposed fee increase only captures a small percentage of the actual FTE cost of conducting inspections including the licensing specialist and supervisor. State statute at section 26-6-105(1)(b)(IV) allows for the state department to establish fees for the filing of appeals and waivers. The Department receives an average of 600-700 appeal and waiver requests each year from child care providers, facilities and agencies asking to appeal or waive a regulation. Currently, the workload to process appeals and waivers creates a significant FTE workload for the division.			
Adopted: 2/02/2018	12 CCR 2509-8	Child Care Facility Licensing	Revision	26-1-107, C.R.S. (2015) 26-1-109, C.R.S. (2015) 26-1-111, C.R.S. (2015) 26-6-106(1)(a), C.R.S. (2017) 26-6-113, C.R.S. (2017)	The Department is statutorily required to review rules on a regular basis and is authorized to promulgate rules for licensed child care programs providing less than twenty-four (24) hour care that create standards and regulations for these child care programs. This package expands and clarifies children's health and medication requirements, eliminates unnecessary or duplicate rules, clarifies existing rules, and adds requirements for safety, physical activity and screen time. The previous comprehensive review and revision for the entire rule package for the "Rules Regulating Children's Resident Camps" and the "Rules Regulating School-aged Child Care Centers" was completed in 2007.	Designated providers, facilities and agencies	Adopted	No
Hearing: 11/02/2018	12 CCR 2509-8	Substitute Placement Agency for Less Than 24	New Rule	26-1-107, C.R.S. (2017) 26-1-	Senate Bill 18-162 creating a new less than 24 hour license type was signed into law April 12, 2018	Family Child Care Home Providers, Child Care Centers,	Ongoing	No

		Hour Care Facilities		109, C.R.S. (2017) 26-1-111, C.R.S. (2017) 26-6-103.3, C.R.S. (2017) 26-6-106(1)(a), C.R.S. (2017)	requiring the Department to promulgate a new rule set for the new license type. This package adds new rules regarding the creation of a Substitute Placement Agency.	Preschools and School Age Child Care		
Adopted: 2/02/2018	12 CCR 2503-5	Adult Financial Programs	Revision	26-1-107, C.R.S. (2017) 26-1-109, C.R.S. (2017) 26-1-111, C.R.S. (2017) 24-4-103, C.R.S. (2017) 26-2-111, C.R.S. (2017) 20 CFR 416 et seq.	On October 13, 2017, the Social Security Administration (SSA) announced a 2.0% Cost of Living Adjustment (COLA) for all Social Security and Supplemental Security Income recipients effective December 31, 2017. Colorado has a Maintenance of Effort requirement with the Social Security Administration that requires the State to “pass through” the COLA to recipients in order to spend at least the same amount in the current year as in the year prior. This means an increase in Adult Financial assistance. These rules propose an increase to the Supplemental Security Income (SSI) maximum payment by fifteen dollars (\$15) ( $\$735 \times 2\% = \$15$ ) to \$750 per month. This rule will revise the Colorado Department of Human Services rules to increase the Old Age Pension (OAP) grant standard to \$788, the Aid to the Needy Disabled Colorado Supplement (AND-CS) grant standard to \$750, and the Adult Foster Care (AFC) grant standard to \$1382 in order to pass along the \$15 COLA increase. The components of the grant standard will be adjusted accordingly.	County partners	Adopted	No
Hearing 12/07/2018	9 CCR 2503-5	Old Age Pension, Aid to the Needy	Revision	26-1-107, C.R.S. (2018)	On October 11, 2018, the Social Security Administration (SSA)	County partners, & all: OAP, AND-CS, and	Ongoing	No

		Disabled Colorado Supplement, and Adult Foster Care Cost of Living Adjustment Increase for 2019		26-1-109, C.R.S. (2018) 26-1-111, C.R.S. (2018) 24-4-103, C.R.S. (2018) 26-2-111, C.R.S. (2018) 20 CFR 416 et seq.	announced a 2.8% Cost of Living Adjustment (COLA) for all Social Security and Supplemental Security Income recipients effective December 31, 2018. Colorado has a Maintenance of Effort requirement with the Social Security Administration that requires the State to “pass through” the COLA to recipients in order to spend at least the same amount in the current year as in the year prior. This means an increase in Adult Financial assistance. These rules propose an increase to the Supplemental Security Income (SSI) maximum payment by twenty one dollars (\$21) ( $\$750 \times 2.8\% = \$21$ ) to \$771 per month.  This rule will revise the Colorado Department of Human Services rules to increase the Old Age Pension (OAP) grant standard to \$809, the Aid to the Needy Disabled Colorado Supplement (AND-CS) grant standard to \$771, and the Adult Foster Care (AFC) grant standard to \$1403 in order to pass along the \$21 COLA increase. The components of the grant standard will be adjusted accordingly.	AFC recipients		
Adopted: 4/06/2018	2 CCR 502-1	Behavioral Health	New Rule	27-65, C.R.S. (2017)	The new Transportation Hold created by SB17-207	Designated Facilities, hospitals, advocacy organizations	Adopted	No
Adopted: 9/07/2018	9 CCR 2503-7	Revisions to Low Income Energy Assistance Program (LEAP)	Revision	26-1-107, C.R.S. (2017) 26-1-109, C.R.S. (2017) 26-1-111, C.R.S. (2017)	The Low Income Energy Assistance Program (LEAP) is reviewed annually for updates that may be needed for the next benefit season, beginning November 1st. New rule changes are:	State LEAP unit, County Partners (staff and clients)	Adopted	No

				<p>§26-2-122.5, C.R.S. (2017)  §40-8.5-101, C.R.S. (2017)  §40-8.7-101, C.R.S. (2017), et seq  §40-8.7-109, C.R.S. (2017)  §40.8.7-112(1), (2017)</p>	<ul style="list-style-type: none"> <li>Updating the income requirements based on the current federal poverty level guidelines and the flat rates used for benefit calculations</li> <li>Adding Discrepancy to definitions to provide clarity in reference to the term in LEAP rule</li> <li>Adding Prudent Person Principle to definitions to align with other programs and allow for the usage</li> <li>Add electronic form of submission to increase avenues of documentation submission</li> <li>Struck from rule 2 citations that were directly related to the old LEAP system and are no longer relevant</li> <li>Add in several areas “or verbal” to allow for verbal submissions to lessen client burden of document submission</li> <li>Add for consideration county electronic files</li> <li>Add clarification to what constitutes zero income, which includes shelter expenses exceeding income</li> <li>Add collateral contact in two instances to clarify this is an acceptable form of verification</li> <li>Addition of Tiny Homes as they are becoming more prevalent in in areas of Colorado</li> <li>Allow for a technical clean-up of rules that are incorporated into other volumes and are duplicative in this rule</li> </ul> <p>These rule changes align case processing timelines with C-STAT goals and provide streamlined and consistent processes to provide the framework for counties to better serve clients.</p>			
Adopted: 9/07/2018	9 CCR 2503-1	Income Maintenance	Revision	26-1-107, C.R.S. (2017)	The proposed rule modifications are in response to	County partners	Adopted	No



		Volume 9 CCR 2503-1 Technical Cleanup		26-1-109, C.R.S. (2017) 26-1-111, C.R.S. (2017) 26-2-122.3, C.R.S. (2017)	Executive Order D-005- to reduce burdensome rules. The rules found in 9 CCR 2503-1 applicable to the Low Income Energy Assistance Program (LEAP), Colorado Child Care Assistance Program (CCCAP) and the Colorado Refugee Assistance Program (CRSP) have all been moved to other sections of 9 CCR 2503. The rules that remain in this section are out dated and duplicative of those currently found in the other sections. This proposed rule modification is a technical cleanup that will remove the language for the programs mentioned previously which can be found in the other sections.			
Adopted: 9/07/2018	9 CCR 2502-1	County Personnel and Merit System	Revision	26-1-107, C.R.S. (2015) 26-1-109, C.R.S. (2015) 26-1-111, C.R.S. (2015) C.R.S. 26-1-118 (2) 5 C.F.R. § 900.604	Current rule does not specify who at the county should certify the existence of a merit system, and the proposed rule specifies that the board of county commissioners or designee should sign. This change is proposed because the merit system is overseen by the commissioners. Current rule also outlines minimum qualifications for county child welfare and adult protective services staff, but those qualifications and waivers are already covered in other rule volumes. The proposed rule references the appropriate staff qualification rules.	County partners/personnel	Adopted	No
Adopted: 9/07/2018	9 CCR 2503-2	Income Maintenance Volume 9 CCR 2503-2 Technical Cleanup	Revision	26-1-107, C.R.S. (2017) 26-1-109, C.R.S. (2017) 26-1-111, C.R.S. (2017) 26-2-122.3, C.R.S. (2017)	These rules indicate they are only applicable to LEAP, CCAP and CRSP. No other EBD programs. Please note: These rules are not applicable to CRSP. The requirements outlined in this rule have been incorporated into CCCAP rule. CCCAP no longer	County partners	Adopted	No

					utilizes this section of the rule. LEAP no longer utilizes this section of the rule.			
Adopted: 10/05/2018	12 CCR 2509-3	Technical Clean Up - Division of Child Welfare 7.205	Revision	26-1-107, C.R.S. (2017) 26-1-109, C.R.S. (2017) 26-1-111, C.R.S. (2017) 26-1-111, C.R.S. (2017)	The rule change is necessary to provide technical clean-up to already existing rules.	County partners	Adopted	No
Adopted: 10/05/2018	12 CCR 2509-4	Technical Clean Up - Division of Child Welfare 7.304	Revision	26-1-107, C.R.S. (2017) 26-1-109, C.R.S. (2017) 26-1-111, C.R.S. (2017) 26-1-111, C.R.S. (2017)	The rule change is necessary to provide technical clean-up to already existing rules.	County partners	Adopted	No
Hearing: 12/07/2018	12 CCR 2509-4	7.000.2 Change definitions to align with statute	Revision	26-1-107, C.R.S. (2015) 26-1-109, C.R.S. (2015) 26-1-111, C.R.S. (2015) 26-1-111, C.R. S. (2015)	The passage of a number of legislative items in 2018 made changes to a number of terms currently defined in 7.000.2. This rule packet is to align the definitions in rule to those now in statute.	Children, youth and families in Colorado along with county child welfare	Ongoing	No
Adopted: 10/05/2018	12 CCR 2509-5	Technical Clean Up - Division of Child Welfare - 7.407	Revision	26-1-107, C.R.S. (2017) 26-1-109, C.R.S. (2017) 26-1-111, C.R.S. (2017) 26-1-111, C.R.S. (2017)	The rule change is necessary to provide technical clean-up to already existing rules.	County partners	Adopted	No
Adopted: 10/05/2018	12 CCR 2509-9	Nurse Home Visitor Program	Revision	26-1-107, C.R.S. (2016) 26-1-109, C.R.S. (2016) 26-1-111, C.R.S. (2016)	It is proposed to update 7.821 B in order to accurately reflect the timeline for the annual report for NHVP. The suggested updated is to state "Annual program reports shall be submitted in accordance	Nurse Home Visitor Program Colorado Coordination Team, which is comprised of Colorado Department of Human Services,	Adopted	No

				26-6.4.101 26-6.4.107	with statutory requirements for Master Tobacco Settlement Agreement funding.” It is proposed that the language for 7.812 A. 1. be updated to read “A budget which includes each of the following.” This update is to accurately reflect the requirements for NHVP site budgets.	Invest in Kids, the University of Colorado and Nurse-Family Partnership National Service Office		
Hearing 11/02/2018	2 CCR 501-1	Revisions to the Rules Implementing the Children and Youth Mental Health Treatment Act	Revision	26-1-107, C.R.S. (2018) 26-1-109, C.R.S. (2018) 26-1-111, C.R.S. (2018) 27-67-106, C.R.S. (2018) 27-67-107, C.R.S.	House Bill 18-1094 reauthorized, renamed, and updated the Child Mental Health Treatment Act (Act). The proposed rule revisions align the program regulations with the statutory changes to the Act from House Bill 18-1094. The renamed Children and Youth Mental Health Treatment Act allows families to access community, residential, and transitional treatment services for their child without requiring a dependency and neglect action, when there is no child abuse or neglect. To be eligible, a child must have a mental health disorder, be under the age of 21, and be at risk of out-of-home placement or at risk of further involvement with a county department of human/social services.	Entities providing the services, including entities assigned to participate in the dispute resolution process, under Children and Youth Mental Health Treatment Act (CYMHTA)	Ongoing	No

## **Departmental Regulatory Agendas**

### **Department**

Department of Revenue

2019  
Colorado Department of Revenue  
Regulatory Agenda  
January 1, 2019 - December 31, 2019



## Taxpayer Service Division - Tax Group 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
<i>Anticipated Hearing Date (Month Year)</i>	<i>Anticipated Adoption Date (Month Year)</i>			<i>If only a part of a CCR is repealed, it should be classified as "revised".</i>	<i>If statutory, list C.R.S.</i>		<i>Consider including high-level outreach bullets.  Categories of stakeholders, not individual stakeholders.</i>
April 2019	May 2019	1 CCR 201-2 Regulation 39-22-303.1	Apportionment for Tax Years Beginning Prior to January 1, 2009	Repeal	§39-21-112(1), 39-22-301, and 24-60-1301, C.R.S.	Repeal rule as no longer applicable.	All Corporate Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22-303.3	Inclusion of Tangible Drilling Costs in the Property Factor.	Repeal	§39-21-112(1) and 39-22-301, C.R.S.	Repeal rule as no longer applicable.	Drilling Industry, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22- 303.5.1(A)	Business and Nonbusiness Income	Repeal	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Repeal rule because rule will be replaced with a new rule in conformity with HB18-1185.	All Corporate Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22-303.6 (1)	Apportionable and Nonapportionable Income	New Rule	§39-21-112(1), 39-22-301, and 39-22-303.6, C.R.S.	New rule to conform with HB18-1185.	All Corporate Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22- 303.5.1(B)	Other Definitions	Repeal	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Repeal rule because definitions will be moved into other rules in conformity with HB18-1185.	All Corporate Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22- 303.5.3	Apportionment and Allocation	Repeal	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Repeal rule because rule will be replaced with a new rule in conformity with HB18-1185.	All Corporate Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22-303.6 (3)	Apportionment and Allocation of Income	New Rule	§39-21-112(1), 39-22-301, and 39-22-303.6, C.R.S.	New rule to conform with HB18-1185.	All Corporate Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22- 303.5.4(A)	Calculation of Sales Factor	Repeal	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Repeal rule because rule will be replaced with a new rule in conformity with HB18-1185.	All Corporate Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22-303.6 (4)	Calculating the Receipts Factor	New Rule	§39-21-112(1), 39-22-301, and 39-22-303.6, C.R.S.	New rule to conform with HB18-1185.	All Corporate Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22- 303.5.4(B)	Sales of Tangible Personal Property in this State	Repeal	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Repeal rule because rule will be replaced with a new rule in conformity with HB18-1185.	All Corporate Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22- 303.5.4(C)	Sales Other than Sales of Tangible Personal Property in this State	Repeal	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Repeal rule because rule will be replaced with a new rule in conformity with HB18-1185.	All Corporate Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22- 303.5.5	Nonbusiness Income	Revision	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Renumber and Rename rule to conform with HB18-1185.	All Corporate Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22- 303.5.6	Election to Treat Nonbusiness Income as Business Income	Revision	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Renumber, rename, and revise rule to conform with HB18-1185.	All Corporate Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22- 303.5.7(A)	Special Regulations	Repeal	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Repeal rule as unnecessary.	All Corporate Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22- 303.5.7(B)	Alternative Apportionment	Revision	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Renumber, rename, and revise rule to conform with HB18-1185.	All Corporate Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22- 303.5.8	Income from Foreclosures	Revision	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Renumber, rename, and revise rule to conform with HB18-1185.	All Corporate Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22- 303.5.9	Apportionment Rules and Regulations Issued Pursuant to Article IV of the Multistate Tax Compact	Repeal	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Repeal rule as unnecessary.	All Corporate Income Taxpayers, Tax Practitioners

## Taxpayer Service Division - Tax Group 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
<i>Anticipated Hearing Date (Month Year)</i>	<i>Anticipated Adoption Date (Month Year)</i>			<i>If only a part of a CCR is repealed, it should be classified as "revised".</i>	<i>If statutory, list C.R.S.</i>		<i>Consider including high-level outreach bullets.  Categories of stakeholders, not individual stakeholders.</i>
April 2019	May 2019	1 CCR 201-2 Regulation 39-22- 303.7.1	Other Definitions	Review	§39-21-112(1), 39-22-301, and 39-22-303.7, C.R.S.	Review pursuant to 24-4-103.3, C.R.S.	Mutual Fund Service Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22- 303.7.2	Application	Review	§39-21-112(1), 39-22-301, and 39-22-303.7, C.R.S.	Review pursuant to 24-4-103.3, C.R.S.	Mutual Fund Service Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22-303 (11)(c)	Apportionment of Income on a Combined Report or Consolidated Return	Revision	§39-21-112(1), 39-22-301, 39-22-303.5, 39-22-303.6, and 39-22-303, C.R.S.	Revise rule to conform with HB18-1185.	All Corporate Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Regulation 39-22-109	Colorado-Source Income	Revision	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Update references to conform with HB18-1185.	All Corporate Income Taxpayers, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Special Regulation SR- 1A	Airlines	Revision	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Revise rule to conform with HB18-1185.	Airline Industry, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Special Regulation SR- 2A	Contractors	Revision	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Revise rule to conform with HB18-1185.	Contractors, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Special Regulation SR- 3A	Publishing	Revision	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Revise rule to conform with HB18-1185.	Publishing Industry, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Special Regulation SR- 4A	Railroads	Revision	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Revise rule to conform with HB18-1185.	Railroad Industry, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Special Regulation SR- 5A	Television and Radio	Revision	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Revise rule to conform with HB18-1185.	Television and Radio Industry, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Special Regulation SR- 6A	Trucking	Revision	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Revise rule to conform with HB18-1185.	Trucking Industry, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Special Regulation SR- 7A	Financial Institutions	Revision	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Revise rule to conform with HB18-1185.	Financial Institutions Industry, Tax Practitioners
April 2019	May 2019	1 CCR 201-2 Special Regulation SR- 8A	Telecommunications	Revision	§39-21-112(1), 39-22-301, 39-22-303.5, and 39-22-303.6, C. R.S.	Revise rule to conform with HB18-1185.	Telecommunication Industry, Tax Practitioners
March 2019	April 2019	1 CCR 201-6 Regulation 39-35-104	Aircraft Manufacturer New Employee Credit	Revision	§39-21-112(1) and 39-35-104, C.R.S.	Address the refundable credit for renewable energy investments.	Enterprise Zone Businesses and Administrators
March 2019	April 2019	1 CCR 201-13 Regulation 39-30-105	Enterprise Zone New Business Facility Employee Credit	Repeal	§39-21-112(1), 39-30-105, and 39-30-108(1), C.R.S.	Repeal rule because credit has not been allowed since 2013.	Enterprise Zone Businesses and Administrators
March 2019	April 2019	1 CCR 201-13 Regulation 39-30-105.1	Enterprise Zone Business Employees	New Rule	§39-21-112(1), 39-30-105.1, and 39-30-108(1), C.R.S.	New rule to clarify the enterprise zone credit for new business employees.	Enterprise Zone Businesses and Administrators
December 2019	January 2020	1 CCR 201-4 Regulation 39-26- 102.15	Tangible Personal Property	Revision	§39-21-112(1), 39-26-107, and 39-26-102(15), C.R.S.	Conform to contractors regulation.	All Retailers, Tax Practitioners
December 2019	January 2020	1 CCR 201-4 Regulation 39-26-703.2 (c)	Contractor's refund claim	Revision or repeal	§39-21-112(1), 39-26-107, and 39-26-703(2)(c), C.R.S.	Reconcile, consolidate, and/or repeal related regulations regarding contractors.	Contractors, tax practitioners, tax- exempt organizations, local governments

## Taxpayer Service Division - Tax Group 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
<i>Anticipated Hearing Date (Month Year)</i>	<i>Anticipated Adoption Date (Month Year)</i>			<i>If only a part of a CCR is repealed, it should be classified as "revised".</i>	<i>If statutory, list C.R.S.</i>		<i>Consider including high-level outreach bullets.  Categories of stakeholders, not individual stakeholders.</i>
December 2019	January 2020	1 CCR 201-4 Regulation 39-26-708.1	Contractors for exempt projects	Revision or repeal	§39-21-112(1), 39-26-107, and 39-26-708(1), C.R.S.	Reconcile, consolidate, and/or repeal related regulations regarding contractors.	Contractors, tax practitioners, tax-exempt organizations, local governments
December 2019	January 2020	1 CCR 201-4 Regulation 39-26-708.3	Contractors for exempt projects	Revision or repeal	§39-21-112(1), 39-26-107, and 39-26-708, C.R.S.	Reconcile, consolidate, and/or repeal related regulations regarding contractors.	Contractors, tax practitioners, tax-exempt organizations, local governments
December 2019	January 2020	1 CCR 201-4 Special Regulation 10	Contractors for exempt projects	Revision or repeal	§39-21-112(1) and 39-26-107, C.R.S.	Reconcile, consolidate, and/or repeal related regulations regarding contractors.	Contractors, tax practitioners, tax-exempt organizations, local governments
December 2019	January 2020	1 CCR 201-4 Special Regulation 10.1	Priority of credits for taxes paid to another state	Revision or repeal	§39-21-112(1), 39-26-107, and 39-26-713(2)(f), C.R.S.	Reconcile, consolidate, and/or repeal related regulations regarding contractors.	Contractors, tax practitioners, tax-exempt organizations, local governments
December 2019	January 2020	1 CCR 201-4 Special Regulation 28	Maintenance and Decorating Services	Revision or repeal	§39-21-112(1) and 39-26-107, C.R.S.	Reconcile, consolidate, and/or repeal related regulations regarding contractors.	Contractors, tax practitioners, tax-exempt organizations, local governments
December 2019	January 2020	1 CCR 201-4 Special Regulation 29	Manufacturers and Prefabricators Acting as Contractors	Revision or repeal	§39-21-112(1) and 39-26-107, C.R.S.	Reconcile, consolidate, and/or repeal related regulations regarding contractors.	Contractors, tax practitioners, tax-exempt organizations, local governments
December 2019	January 2020	1 CCR 201-4 Special Regulation 37	Ready-Mix Concrete	Revision or repeal	§39-21-112(1) and 39-26-107, C.R.S.	Reconcile, consolidate, and/or repeal related regulations regarding contractors.	Contractors, tax practitioners, tax-exempt organizations, local governments
December 2019	January 2020	1 CCR 201-4 Special Regulation 39	Sand and Gravel	Review	§39-21-112(1) and 39-26-107, C.R.S.	Review pursuant to 24-4-103.3, C.R.S.	Aggregate Industry
November 2019	December 2019	1 CCR 201-1 Regulation 39-21-103	Hearings	Review	§39-21-112(1) and 39-21-103, C.R.S.	Review pursuant to 24-4-103.3, C.R.S.	All Taxpayers, Tax Practitioners
November 2019	December 2019	1 CCR 201-1 Regulation 39-21-104	Rejection of Claims	Review	§39-21-112(1), 39-21-103, and 39-21-104, C.R.S.	Review pursuant to 24-4-103.3, C.R.S.	All Taxpayers, Tax Practitioners
November 2019	December 2019	1 CCR 201-1 Regulation 39-21-105	Appeals	Review	§39-21-112(1) and 39-21-105, C.R.S.	Review pursuant to 24-4-103.3, C.R.S.	All Taxpayers, Tax Practitioners
November 2019	December 2019	1 CCR 201-1 Regulation 39-21-105.5	Notices of First Class Mail	Review	§39-21-112(1) and 39-21-105.5, C.R.S.	Review pursuant to 24-4-103.3, C.R.S.	All Taxpayers, Tax Practitioners
November 2019	December 2019	1 CCR 201-1 Regulation 39-21-111	Jeopardy Assessment and Demands	Review	§39-21-112(1) and 39-21-111, C.R.S.	Review pursuant to 24-4-103.3, C.R.S.	All Taxpayers, Tax Practitioners
July 2019	August 2019	1 CCR 201-1 Regulation 24-35-103.5	Information Letters and Private Letter Rulings	Revision	§39-21-112(1) and 24-35-103.5, C.R.S.	Review pursuant to 24-4-103.3, C.R.S.	All Taxpayers, Tax Practitioners



## Liquor Enforcement Division 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
<i>Anticipated Hearing Date (Month Year)</i>	<i>Anticipated Adoption Date (Month Year)</i>			<i>If only a part of a CCR is repealed, it should be classified as "revised".</i>	<i>If statutory, list C.R.S.</i>		<i>Consider including high-level outreach bullets.  Categories of stakeholders, not individual stakeholders.</i>
October 2019	January 2020	1 CCR 203-2 Regulation 47-307	Master Files	N/A	§44-3-402, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-309	Sports and Entertainment Venues	N/A	§44-3-402, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-310	Application - General Provisions	N/A	§44-3-402, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-311	Public Transportation System License	N/A	§44-3-302, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-312	Change of Location	N/A	§44-3-302, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-314	Limited Liability Company	N/A	§44-3-302, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-316	Advertising Practices	N/A	§44-3-302, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-317	Market Research - Non-Licensed Locations	N/A	§44-3-302, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-318	Owner-Manager	N/A	§44-3-302, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-319	Liquor-Licensed Drugstore Manager Permit	N/A	§44-3-302, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-320	Signs and Interior Displays	N/A	§44-3-302, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-322	Unfair Trade Practices and Competition	N/A	§44-3-302, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-323	Unlawful Extension of Credit	N/A	§44-3-302, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-324	Concurrent Application Review	N/A	§44-3-302, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-326	Distance Restriction - Applicability and Measurement	N/A	§44-3-302, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-328	Entertainment Districts	N/A	§44-3-302, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-400	Licensed Breweries, Distilleries and Wineries	N/A	§44-3-302, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-402	Confiscated Shipments	N/A	§44-3-302, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-404	Foreign Trade Zones	N/A	§44-3-302, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-406	Wholesale Dealer - Importation	N/A	§44-3-302, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public
October 2019	January 2020	1 CCR 203-2 Regulation 47-407	Liquor-Licensed Drugstore	N/A	§44-3-302, C.R.S.	Planned Review of the 20% of the Liquor Rules.	LED, Liquor Licensees, Local Licensing Authorities, General Public

## Division of Motor Vehicles 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
Anticipated Hearing Date (Month Year)	Anticipated Adoption Date (Month Year)			If only a part of a CCR is repealed, it should be classified as "revised".	If statutory, list C.R.S.		Consider including high-level outreach bullets.  Categories of stakeholders, not individual stakeholders.
5/30/2018	8/30/2018	1 CCR 204-10 Rule 1	Temporary Special Event License Plates	Revision	§42-1-102(24.5), 42-1-102(41.5), 42-1-204, 42-3-220, 42-3-301, 42-4-110, and 42-4-242, C.R.S.	The purpose of this rule is to establish criteria for the issuance of Temporary Special Event License Plates and for the issuance and use of Temporary Special Event License Plates for Autonomous Vehicles. Part of 2019 Regulatory Agenda, completed ahead of schedule in 2018.	Dealerships, County Clerk and Recorder, Law Enforcement
11/2018	2/2019	1 CCR 204-10 Rule 6	Colorado State Patrol License Plates	Revision	§42-1-204, 42-3-104(1), 42-3-104(2), 42-3-104(3), 42-3-104(4), 42-3-201, and 42-3-207(1), C.R.S.	The following rules and regulations are promulgated to establish criteria for the issuance of Colorado State Patrol license plates.	Dealerships, County Clerk and Recorder, Law Enforcement
12/2018	3/2019	1 CCR 204-10 Rule 7	Motorist Insurance Identification Database (MIIDB)	Revision	§42-1-204 42-7-103, and 42-7-604, C.R.S.  Part 6 of Article 4 of Title 10, C.R.S.  1 CCR 204-10 Rule 46	The following rules and regulations are promulgated to establish Motorist Insurance Identification Database (MIIDB) reporting requirements for insurance companies issuing vehicle insurance policies in Colorado.	Vehicle Owners, VIN Inspectors, Insurance Companies, County Clerk and Recorder
1/2019	4/2019	1 CCR 204-10 Rule 8	Dealer Title	Revision	§42-1-204, 42-6-102(2), 42-6-111(2), 42-6-137(6), 42-6-138(4), 12-6-102(15), 12-6-102(18), C.R.S.	The purpose of this regulation is to provide guidelines to motor vehicle dealers or wholesalers for proof of ownership and the requirements for the processing of certificates of title.	Vehicle Owners, VIN Inspectors, Insurance Companies, County Clerk and Recorder
1/2019	4/2019	1 CCR 204-10 Rule 12	Obtaining Record for Abandoned Motor Vehicles	Revision	§42-1-204, C.R.S.  Part 18 of Article 4 of Title 42 and Part 21 of Article 4 of Title 42, C.R.S.	The purpose of this rule is to provide procedures for obtaining records and accessing the Department Website for Abandoned Motor Vehicles.	Vehicle Owners, Law Enforcement Agencies, County Clerk and Recorders, Tolling Authorities
11/2018	2/2019	1 CCR 204-10 Rule 16	Group Special License Plates	Revision	§42-1-102(41.5), 42-1-204, 42-3-207, 42-3-208, and 42-3-301, C.R.S.	This rule is promulgated to establish criteria for the application, responsibilities, and processes for group special license plates.	Group Special License Plate Non-Profits, Colorado Correctional Industries, County Clerk and Recorders
11/2018	2/2019	1 CCR 204-10 Rule 20	License Plate Retirement	Revision	§42-1-204, 42-3-207, 42-3-212(7), 42-3-214(7), 42-3-221(6), 42-3-222(6), 42-3-223(6), 42-3-224(2)(a), 42-3-225(2)(b), 42-3-226(2)(a), 42-3-227(6), 42-3-228(6), 42-3-229(2)(a), 42-3-230(6), 42-3-231(6)(a), 42-3-232(6)(a), 42-3-233(6), 42-3-234(6)(a), 42-3-237(6), 42-3-238(2)(a), 42-3-239(2)(a), 42-3-240(2)(a), 42-3-241(2)(a), 42-3-242(2)(a), 42-3-243(2)(a), 42-3-244(2)(a), 42-3-245(2)(a), 42-3-246(2)(a), 42-3-247(2)(a), 42-3-248(2)(a), 42-3-249(2)(a), 42-3-250(2)(a), and 42-3-251(2)(a), C.R.S.	This rule is promulgated to establish criteria for the Retirement of Group Special and Alumni License Plates	Group Special License Plate Non-Profits, Alumni Associations, County Clerk and Recorders, Colorado Correctional Industries
8/2019	11/2019	1 CCR 204-10 Rule 25	Persons with Disabilities Parking Privileges	Revision	§42-1-204 and 42-3-204, C.R.S.	The following rule is promulgated to clarify that an application and renewal form created pursuant to section 42-3-204, C.R.S., is required for the issuance, renewal, and replacement of a person with disabilities parking privileges license plate and/or placard.	Vehicle Owners, Law Enforcement Agencies, County Clerk
11/2018	2/2019	1 CCR 204-10 Rule 45	Alumni License Plates	Revision	§42-1-204 and 42-3-214, C.R.S.	This rule is promulgated to establish and clarify application processes and responsibilities for the issuance and maintenance of Alumni License Plates.	Alumni Associations, Colorado Correctional Industries, County Clerk and Recorder
3/2019	6/2019	1 CCR 204-10 Rule 50	Slow Moving Vehicles	Revision	No CCR or statutory basis listed in rule current version of the rule	The following rule is promulgated to establish criteria for the use and display of the "Slow Moving Vehicle" emblem.	Vehicle Owners, Law Enforcement Agencies, County Clerk
1/2019	4/2019	1 CCR 204-30 Rule 1	Rules for Application for a Colorado Road and Community Safety Act ID 42-2-501 CRS	Revision	§24-4-103, 24-72.1-103, 42-1-204, C.R.S.  Parts 1, 2, 3, and 5 of Article 2 of Title 42, C.R.S.	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.	Colorado Auto Dealers Association, Colorado Immigrants Rights Coalition, Local Government, ID Task Force, SB251, Colorado Residents

## Division of Motor Vehicles 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
1/2019	3/2019	1 CCR 204-30 Rule 6	Rules for the Application for a Driver's License, Instruction Permit or Identification Card for U.S. Citizens and Individuals Who Can Demonstrate Permanent Lawful Presence and Colorado Residency	Revision	§24-4-103, 24-72.1-103, 42-1-204, 42-2-107, 42-2-108, and 42-2-302, C.R.S.	The purpose of this rule is to set forth regulations for the types of documents the Department will accept as proof of the applicant's identity, date of birth, social security number, address of principal residence in Colorado, and U.S. citizenship or permanent lawful presence when applying for a driver's license, instruction permit, or identification card. Additionally, this rule describes the process the applicant will be required to follow for completing the application and what will occur if an application is incomplete or denied, including the process the applicant may use to request a hearing if their application is denied.	Driving Schools, Law Enforcement, High School Students, Colorado Residents, DMV Offices, County Offices
2/2019	4/2019	1 CCR 204-30 Rule 12	Rules Governing Enrollment in Level II Alcohol and Drug Education and Treatment Programs	Revision	§42-2-144 and 42-4-1301.3, C.R.S. (2015)	The purpose of this rule is to set forth the types of documents that the Department will accept as proof that a driver has enrolled in or has completed a required Level II treatment program. It clarifies that a Level II treatment program is required by statute when a driver has specific alcohol and/or drug violations, and describes the process for reinstatement of the driving privilege in connection with such programs. The rule also outlines the responsibilities of the Department as well as the Office of Behavioral Health with maintaining accurate records of both client and Level II provider status.	Education/Treatment Facilities, Law Enforcement, Rehab Centers, Colorado Citizens, DMV Offices, County Offices
3/2019	6/2019	1 CCR 204-30 Rule 16	Rules for Exceptions Processing	Revision	§13-15-101(5)(a), 13-15-102, 24-4-103, 42-1-204, 42-1-230, 42-2-107, 42-2-302, and 42-2-136, C.R.S.  This regulation applies to documents issued under Parts 1, 2, 3, and 5 of Article 2 of Title 42, C.R.S.	The purpose of this rule is to set forth regulations for an Exceptions Process and identify the alternate documents the Department will accept. Exceptions Processing is the procedure the Department has established for persons who are unable, for reasons beyond their control, to present all the necessary documents required for a Colorado or Colorado Road and Community Safety Act driver's license, instruction permit, or identification card, and must rely on alternative documents. For applicants who are U.S. citizens, Exceptions Processing allows for alternative documents to be presented that establish identity, date of birth, and U.S. citizenship in lieu of lawful presence. For applicants who cannot demonstrate lawful presence or for applicants who can demonstrate temporary or permanent lawful presence, Exceptions Processing allows for alternative documents to be presented that establish identity, and date of birth. For applicants who are homeless, Exceptions Processing allows for an alternative to establish residency.	DMV Offices, Colorado Residents, Law Enforcement, County Offices
4/2019	7/2019	1 CCR 204-31 Rule 1	Rules for Measurement of Noise from New Motor Vehicles	Revision	§25-12-106(2), C.R.S.	The purpose of the rule is to establish a test procedure for measuring noise produced from new motor vehicles sold or offered for sale in Colorado.	Vehicle Owners, Law Enforcement, Testing Facilities, Dealerships

## Motor Vehicle Dealer Board 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
<i>Anticipated Hearing Date (Month Year)</i>	<i>Anticipated Adoption Date (Month Year)</i>			<i>If only a part of a CCR is repealed, it should be classified as "revised".</i>	<i>If statutory, list C.R.S.</i>		<i>Consider including high-level outreach bullets.  Categories of stakeholders, not individual stakeholders.</i>
February, 2019	April, 2019	1 CCR 205-1 Regulation # 44-20-118 (7)(d)	Part of Regulatory Scheme for Pre- licensing Program Providers for Motor Vehicle Dealers	Revision	§44-20-118, C.R.S.	To set out apportion of the criteria related to the Pre-licensing Program for Motor Vehicle Dealers, its Providers, and its Process	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers
February, 2019	April, 2019	1 CCR 205-1 Regulation # 44-20-118 (7)(f)(I)	Part of Regulatory Scheme for Pre- licensing Program Providers for Motor Vehicle Dealers	Revision	§44-20-118, C.R.S.	To set out apportion of the criteria related to the Pre-licensing Program for Motor Vehicle Dealers, its Providers, and its Process.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers
February, 2019	April, 2019	1 CCR 205-1 Regulation # 44-20-118 (7)(f)(II)	Part of Regulatory Scheme for Pre- licensing Program Providers for Motor Vehicle Dealers	Revision	§44-20-118, C.R.S.	To set out apportion of the criteria related to the Pre-licensing Program for Motor Vehicle Dealers, its Providers, and its Process.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers
February, 2019	April, 2019	1 CCR 205-1 Regulation # 44-20-118 (7)(f)(III)	Part of Regulatory Scheme for Pre- licensing Program Providers for Motor Vehicle Dealers	Revision	§44-20-118, C.R.S.	To set out apportion of the criteria related to the Pre-licensing Program for Motor Vehicle Dealers, its Providers, and its Process.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers
February, 2019	April, 2019	1 CCR 205-1 Regulation # 44-20-118 (7)(f)(IV)	Part of Regulatory Scheme for Pre- licensing Program Providers for Motor Vehicle Dealers	Revision	§44-20-118, C.R.S.	To set out apportion of the criteria related to the Pre-licensing Program for Motor Vehicle Dealers, its Providers, and its Process.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers
February, 2019	April, 2019	1 CCR 205-1 Regulation # 44-20-118 (7)(g)	Part of Regulatory Scheme for Pre- licensing Program Providers for Motor Vehicle Dealers	Revision	§44-20-118, C.R.S.	To set out apportion of the criteria related to the Pre-licensing Program for Motor Vehicle Dealers, its Providers, and its Process.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers
February, 2019	April, 2019	1 CCR 205-1 Regulation # 44-20-118 (7)(h)	Part of Regulatory Scheme for Pre- licensing Program Providers for Motor Vehicle Dealers	Revision	§44-20-118, C.R.S.	To set out apportion of the criteria related to the Pre-licensing Program for Motor Vehicle Dealers, its Providers, and its Process.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers
February, 2019	April, 2019	1 CCR 205-2 Regulation # 44-20-417 (7)(d)	Part of Regulatory Scheme for Pre- licensing Program Providers for Powersports Vehicle Dealers	Revision	§44-20-417, C.R.S.	To set out apportion of the criteria related to the Pre-licensing Program for Powersports Vehicle Dealers, its Providers, and its Process.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers
February, 2019	April, 2019	1 CCR 205-2 Regulation # 44-20-417 (7)(f)(I)	Part of Regulatory Scheme for Pre- licensing Program Providers for Powersports Vehicle Dealers	Revision	§44-20-417, C.R.S.	To set out apportion of the criteria related to the Pre-licensing Program for Powersports Vehicle Dealers, its Providers, and its Process.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers
February, 2019	April, 2019	1 CCR 205-2 Regulation # 44-20-417 (7)(f)(II)	Part of Regulatory Scheme for Pre- licensing Program Providers for Powersports Vehicle Dealers	Revision	§44-20-417, C.R.S.	To set out apportion of the criteria related to the Pre-licensing Program for Powersports Vehicle Dealers, its Providers, and its Process.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers

## Motor Vehicle Dealer Board 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
February, 2019	April, 2019	1 CCR 205-2 Regulation # 44-20-417 (7)(f)(III)	Part of Regulatory Scheme for Pre-licensing Program Providers for Powersports Vehicle Dealers	Revision	§44-20-417, C.R.S.	To set out apportion of the criteria related to the Pre-licensing Program for Powersports Vehicle Dealers, its Providers, and its Process.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers
February, 2019	April, 2019	1 CCR 205-2 Regulation # 44-20-417 (7)(f)(IV)	Part of Regulatory Scheme for Pre-licensing Program Providers for Powersports Vehicle Dealers	Revision	§44-20-417, C.R.S.	To set out apportion of the criteria related to the Pre-licensing Program for Powersports Vehicle Dealers, its Providers, and its Process.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers
February, 2019	April, 2019	1 CCR 205-2 Regulation # 44-20-417 (7)(g)	Part of Regulatory Scheme for Pre-licensing Program Providers for Powersports Vehicle Dealers	Revision	§44-20-417, C.R.S.	To set out apportion of the criteria related to the Pre-licensing Program for Powersports Vehicle Dealers, its Providers, and its Process.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers
February, 2019	April, 2019	1 CCR 205-2 Regulation # 44-20-417 (7)(h)	Part of Regulatory Scheme for Pre-licensing Program Providers for Powersports Vehicle Dealers	Revision	§44-20-417, C.R.S.	To set out apportion of the criteria related to the Pre-licensing Program for Powersports Vehicle Dealers, its Providers, and its Process.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers
March, 2019	May, 2019	1 CCR 205-1 Regulation # 44-20-104 (3)(f)(II)	Part of Dealer Dealer Board's Hearing Procedures and Rules for Motor Vehicle-related circumstances	Revision	§44-20-104, C.R.S.	To bring together all of the Procedures and Rules for Dealer Board Hearings and Reviews.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys
March, 2019	May, 2019	1 CCR 205-1 Regulation # 44-20-104 (3)(m)(I)(A)	Part of Dealer Dealer Board's Hearing Procedures and Rules for Motor Vehicle-related circumstances	Revision	§44-20-104, C.R.S.	To bring together all of the Procedures and Rules for Dealer Board Hearings and Reviews.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys
March, 2019	May, 2019	1 CCR 205-1 Regulation # 44-20-124 (2)	Part of Dealer Dealer Board's Hearing Procedures and Rules for Motor Vehicle-related circumstances	Revision	§44-20-104, C.R.S.	To bring together all of the Procedures and Rules for Dealer Board Hearings and Reviews	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys
March, 2019	May, 2019	1 CCR 205-2 Regulation # 44-20-421 (2)	Part of Dealer Dealer Board's Hearing Procedures and Rules for Powersports Vehicle-related circumstances	Revision	§44-20-421, C.R.S.	To bring together all of the Procedures and Rules for Dealer Board Hearings and Reviews	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys
March, 2019	May, 2019	1 CCR 205-1 Regulation # 44-20-121 (3)(a)	One definition of "Material Misstatement" in Motor Vehicle-related circumstances	Revision	§44-20-121, C.R.S.	To consolidate all of the definitions of "Material Misstatement" into one comprehensive definition in both Motor Vehicle-Related and Powersports-Related circumstances	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys

## Motor Vehicle Dealer Board 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
March, 2019	May, 2019	1 CCR 205-1 Regulation # 44-20-121 (6)(a)	One definition of "Material Misstatement" in Motor Vehicle-related circumstances	Revision	§44-20-121, C.R.S.	To consolidate all of the definitions of "Material Misstatement" into one comprehensive definition in both Motor Vehicle-Related and Powersports-Related circumstances	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys
March, 2019	May, 2019	1 CCR 205-2 Regulation # 44-20-420 (3)(a)	One definition of "Material Misstatement" in Powersports Vehicle-related circumstances	Revision	§44-20-420, C.R.S.	To consolidate all of the definitions of "Material Misstatement" into one comprehensive definition in both Motor Vehicle-Related and Powersports-Related circumstances	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys
March, 2019	May, 2019	1 CCR 205-2 Regulation # 44-20-420 (5)(a)	One definition of "Material Misstatement" in Powersports Vehicle-related circumstances	Revision	§44-20-420, C.R.S.	To consolidate all of the definitions of "Material Misstatement" into one comprehensive definition in both Motor Vehicle-Related and Powersports-Related circumstances	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys
March, 2019	May, 2019	1-CCR 205-2 Regulation # 44-20-404 (1)(l)	ANSI Requirements for certain Powersports Vehicles	Revision	§44-20-404(1)(l), C.R.S.	To update the applicable ANSI standards	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys
July, 2019	August, 2019	1 CCR 205-1 Regulation # 44-20-108 (1)(b)	Compensation Disclosures related to compensation of used motor vehicle dealers in particular circumstances	Revision	§44-20-108, C.R.S.	To set out the requirement of compensation disclosure in certain circumstances and establish a uniform format to display necessary features of that compensation	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys
July, 2019	August, 2019	1 CCR 205-1 Regulation # 44-20-121 (3)(c)	Mandatory Disqualifying Conviction Reporting Requirement for Motor Vehicle-related dealership licensees	Revision	§44-20-121, C.R.S.	To set out the requirement of motor vehicle dealer licensees to provide notice to the Auto Industry Division of a mandatorily disqualifying felony conviction.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys
July, 2019	August, 2019	1 CCR 205-1 Regulation # 44-20-121 (6)(f)	Reissue of a Salesperson's license upon his or her transfer to a different Motor Vehicle Dealership	Revision	§44-20-121, C.R.S.	To set out the requirements related to motor vehicle salesperson licensees transfers to other motor vehicle dealerships.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys
July, 2019	August, 2019	1 CCR 205-1 Regulation # 44-20-121 (6)(h)	Mandatory Disqualifying Conviction Reporting Requirement for Motor Vehicle-related salesperson licensees	Revision	§44-20-121, C.R.S.	To set out the requirement of motor vehicle salesperson licensees to provide notice to the Auto Industry Division of a mandatorily disqualifying felony conviction.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys

## Motor Vehicle Dealer Board 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
July, 2019	August, 2019	1 CCR 205-1 Regulation # 44-20-121 (7)	Criteria for denials of applications or for disciplinary actions based upon a) unfitness of licensing character or record, b) unfitness of criminal character or record, or, c) unfitness of financial character or record or failure to pay board fines or submission of checks dishonored by a bank..	Revision	§44-20-121, C.R.S.	To detail the criteria the Board will use repective to the bases of denial of unfitness of licensing character/record, criminal character/record, and financial character/record, as well as failure to pay fines levied by the Board or payment of anything by a check later dishonored by a bank.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys
July, 2019	August, 2019	1 CCR 205-2 Regulation # 44-20-408 (1)(b)	Compensation Disclosures related to compensation of usedpowersports vehicle dealers in particular circumstances	Revision	§44-20-408, C.R.S.	To set out the requirement of compensation disclosure in certain circumstances and establish a uniform format to display necessary features of that compensation.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys
July, 2019	August, 2019	1 CCR 205-2 Regulation # 44-20-420 (3)(c)	Mandatory Disqualifying Conviction Reporting Requirement for Powersports Vehilce-related dealership licensees	Revision	§44-20-420, C.R.S.	To set out the requirement of powersports vehicle dealer licensees to provide notice to the Auto Indstry Division of a mandatorily disqualifying felony conviction.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys
July, 2019	August, 2019	1 CCR 205-2 Regulation # 44-20-420 (5)(f)	To set out the requirements related to powersports vehicle salesperson licensees transfers to other powersports vehicle dealerships.	Revision	§44-20-420, C.R.S.	To set out the requirements related to powersports vehicle salesperson licensees transfers to other powersports vehicle dealerships.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys
July, 2019	August, 2019	1 CCR 205-2 Regulation # 44-20-420 (5)(h)	Mandatory Disqualifying Conviction Reporting Requirement for Powersports Vehicle-related salesperson licensees	Revision	§44-20-420, C.R.S.	To set out the requirement of powersports vehicle salesperson licensees to provide notice to the Auto Indstry Division of a mandatorily disqualifying felony conviction.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys
July, 2019	August, 2019	1 CCR 205-1 Regulation # 44-20-420 (6)	Criteria for denials of applications or for disciplinary actions based upon a) unfitness of licensing character or record, b) unfitness of criminal character or record, or, c) unfitness of financial character or record or failure to pay board fines or submission of checks dishonored by a bank..	Revision	§44-20-420, C.R.S.	To detail the criteria the Board will use repective to the bases of denial of unfitness of licensing character/record, criminal character/record, and financial character/record, as well as failure to pay fines levied by the Board or payment of anything by a check later dishonored by a bank.	Motor Vehicle Dealers, Powersports Vehicle Dealers, and the Organizations representing New and Used Motor Vehicle Dealers and New and Used Powersports Vehicle Dealers as well as their attorneys and consumer protection attorneys

## Colorado Lottery 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
<i>Anticipated Hearing Date (Month Year)</i>	<i>Anticipated Adoption Date (Month Year)</i>			<i>If only a part of a CCR is repealed, it should be classified as "revised".</i>	<i>If statutory, list C.R.S.</i>		<i>Consider including high-level outreach bullets.  Categories of stakeholders, not individual stakeholders.</i>
3/2019	4/2019	1 CCR 206-1 Rule 14.E	Multi-State Jackpot Game - Lucky for Life®	Revision	§44-40-101, 44-40-109(1)(a) and (2), 44-40-113, and 44-40- 114, C.R.S.	<ul style="list-style-type: none"> <li>• Update layout to comply with Secretary of State recommended template.</li> <li>• Reorganize for consistency in numbered headers and names.</li> <li>• Remove outdated information.</li> <li>• Remove awarding prizes to an entity per the official recommendation from the Attorney General's Office.</li> <li>• Update the ability to award Top Tier Prizes without the director's approval when Lottery Funds are available.</li> </ul>	<ul style="list-style-type: none"> <li>• One (1) representative from PGCC (Problem Gaming Coalition of Colorado)</li> <li>• Chain Retailer</li> <li>• One (1) Independent Retailer</li> <li>• One (1) representative from GOCO (Great Outdoors Colorado)</li> <li>• Two (2) Players</li> <li>• Two (2) representatives from CPW (Colorado Parks and Wildlife)</li> <li>• One (1) representative from CTF (Conservation Trust Fund)</li> </ul>
3/2019	4/2019	1 CCR 206-1 Rule 14.A	Multi-State Jackpot Game - Powerball®	Revision	§44-40-101, 44-40-109(1)(a) and (2), 44-40-113, and 44-40- 114, C.R.S.	<ul style="list-style-type: none"> <li>• Update layout to comply with Secretary of State recommended template.</li> <li>• Reorganize for consistency in numbered headers and names.</li> <li>• Remove outdated information.</li> <li>• Remove awarding prizes to an entity per the official recommendation from the Attorney General's Office.</li> </ul>	<ul style="list-style-type: none"> <li>• One (1) representative from PGCC (Problem Gaming Coalition of Colorado)</li> <li>• Chain Retailer</li> <li>• One (1) Independent Retailer</li> <li>• One (1) representative from GOCO (Great Outdoors Colorado)</li> <li>• Two (2) Players</li> <li>• Two (2) representatives from CPW (Colorado Parks and Wildlife)</li> <li>• One (1) representative from CTF (Conservation Trust Fund)</li> </ul>
3/2019	4/2019	1 CCR 206-1 Rule 14.B	Multi-State Jackpot Game - Powerball® - Power Play® Option	Revision	§44-40-101, 44-40-109(1)(a) and (2), 44-40-113, and 44-40- 114, C.R.S.	<ul style="list-style-type: none"> <li>• Update layout to comply with Secretary of State recommended template.</li> <li>• Reorganize for consistency in numbered headers and names.</li> <li>• Remove outdated information.</li> <li>• Remove awarding prizes to an entity per the official recommendation from the Attorney General's Office.</li> </ul>	<ul style="list-style-type: none"> <li>• One (1) representative from PGCC (Problem Gaming Coalition of Colorado)</li> <li>• Chain Retailer</li> <li>• One (1) Independent Retailer</li> <li>• One (1) representative from GOCO (Great Outdoors Colorado)</li> <li>• Two (2) Players</li> <li>• Two (2) representatives from CPW (Colorado Parks and Wildlife)</li> <li>• One (1) representative from CTF (Conservation Trust Fund)</li> </ul>
9/2019	10/2019	1 CCR 206-1 Rule 14.C	Multi-State Jackpot Game - Mega Millions®	Revision	§44-40-101, 44-40-109(1)(a) and (2), 44-40-113, and 44-40- 114, C.R.S.	<ul style="list-style-type: none"> <li>• Update layout to comply with Secretary of State recommended template.</li> <li>• Reorganize for consistency in numbered headers and names.</li> <li>• Remove outdated information.</li> <li>• Remove awarding prizes to an entity per the official recommendation from the Attorney General's Office.</li> </ul>	<ul style="list-style-type: none"> <li>• One (1) representative from PGCC (Problem Gaming Coalition of Colorado)</li> <li>• Chain Retailer</li> <li>• One (1) Independent Retailer</li> <li>• One (1) representative from GOCO (Great Outdoors Colorado)</li> <li>• Two (2) Players</li> <li>• Two (2) representatives from CPW (Colorado Parks and Wildlife)</li> <li>• One (1) representative from CTF (Conservation Trust Fund)</li> </ul>



## Colorado Lottery 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
9/2019	10/2019	1 CCR 206-1 Rule 14.E	Multi-State Jackpot Game - Mega Millions® - Megaplier® Option	Revision	§44-40-101, 44-40-109(1)(a) and (2), 44-40-113, and 44-40-114, C.R.S.	<ul style="list-style-type: none"> <li>• Update layout to comply with Secretary of State recommended template.</li> <li>• Reorganize for consistency in numbered headers and names.</li> <li>• Remove outdated information.</li> <li>• Remove awarding prizes to an entity per the official recommendation from the Attorney General's Office.</li> </ul>	<ul style="list-style-type: none"> <li>• One (1) representative from PGCC (Problem Gaming Coalition of Colorado)</li> <li>Chain Retailer</li> <li>• One (1) Independent Retailer</li> <li>• One (1) representative from GOCO (Great Outdoors Colorado)</li> <li>• Two (2) Players</li> <li>• Two (2) representatives from CPW (Colorado Parks and Wildlife)</li> <li>• One (1) representative from CTF (Conservation Trust Fund)</li> </ul>

## Division of Gaming - Rules Promulgated by Gaming Commission 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
<i>Anticipated Hearing Date (Month Year)</i>	<i>Anticipated Adoption Date (Month Year)</i>			<i>If only a part of a CCR is repealed, it should be classified as "revised".</i>	<i>If statutory, list C.R.S.</i>		<i>Consider including high-level outreach bullets.  Categories of stakeholders, not individual stakeholders.</i>
April and May 2019	5/1/19	1 CCR 207-1 Rule 14	Gaming Tax	Revision	§44-30-201, C.R.S., 44-30-203, C.R.S., 44-30-302, C.R.S., 44-30-602, C.R.S., and 44-30-604, C.R.S., (1991).	Annual Tax Hearing.	Limited Gaming Licensees, Div. of Gaming, Financial Analysts, Community Colleges, Gilpin County, Teller County, City of Cripple Creek, City of Central, City of Black Hawk
June 2019	June 2019	1 CCR 207-1 Rule 3	Applications, Investigations, and Licensure	Revision	§44-30-102, 44-30-103, 44-30-201, 44-30-203, 44-30-302, C.R.S.  Part 5 of Article 30 of Title 44, C.R.S.	Annual Fee Analysis.	Limited Gaming Licensees, Div. of Gaming Employees
Unknown	Unknown	1 CCR 207-1 Rule 1	General Rules and Regulations	Revision	§44-30-102, 44-30-103, 44-30-104, 44-30-201, 44-30-203, and 44-30-302, C.R.S.	Possible updates due to Rule review process.	Limited Gaming Licensees, Div. of Gaming Employees, Gaming Patrons
Unknown	Unknown	1 CCR 207-1 Rule 2	Powers and Duties of Commission and Director	Revision	§44-30-201, 44-30-203, 44-30-301, 44-30-302, 44-30-501, 44-30-502, 44-30-507, 44-30-1103, and 24-4-105, C.R.S.	Possible updates due to Rule review process.	Limited Gaming Licensees, Div. of Gaming Employees, Gaming Commission
Unknown	Unknown	1 CCR 207-1 Rule 3	Applications, Investigations, and Licensure	Revision	§44-30-102, 44-30-103, 44-30-201, 44-30-203, 44-30-302, C.R.S.  Part 5 of Article 30 of Title 44, C.R.S.	Possible updates due to Rule review process.	Limited Gaming Licensees, Div. of Gaming Employees
Unknown	Unknown	1 CCR 207-1 Rule 12	Gaming Devices and Equipment	Revision	§44-30-201, 44-30-203, 44-30-302, and 44-30-806, C.R.S.	Possible updates due to Rule review process.	Limited Gaming Licensees, Div. of Gaming Employees, Gaming Patrons
Unknown	Unknown	1 CCR 207-1 Rule 18	Contract and Formal Agreements Between the Commission and Other State Agencies	Revision	§44-30-302 and 44-30-830, C.R.S.	Possible updates due to Rule review process.	Div. of Gaming Employees, Gaming Commission
Unknown	Unknown	1 CCR 207-1 Rule 19	Gaming Districts	Revision	§44-30-104, 105, 201 and 302, C.R.S.	Possible updates due to Rule review process.	Limited Gaming Licensees, Div. of Gaming Employees

## Colorado Racing Commission 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
<i>Anticipated Hearing Date (Month Year)</i>	<i>Anticipated Adoption Date (Month Year)</i>			<i>If only a part of a CCR is repealed, it should be classified as "revised".</i>	<i>If statutory, list C.R.S.</i>		<i>Consider including high-level outreach bullets.  Categories of stakeholders, not individual stakeholders.</i>
N/A	N/A	1 CCR 208-1 Chapter 1	Chapter 1 -- Definitions (217 Total Definitions)	N/A	N/A	To comply with §24.4-103.3, C.R.S.	Horsemen, Division Employees, Association Employees
N/A	N/A	1 CCR 208-1 Chapter3	Chapter 3 -- Occupational Licenses (111 Total Rules)	N/A	N/A	To comply with §24.4-103.3, C.R.S.	Horsemen, Division Employees, Association Employees

## Executive Director of the Department of Revenue 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
<i>Anticipated Hearing Date (Month Year)</i>	<i>Anticipated Adoption Date (Month Year)</i>			<i>If only a part of a CCR is repealed, it should be classified as "revised".</i>	<i>If statutory, list C.R.S.</i>		<i>Consider including high-level outreach bullets.  Categories of stakeholders, not individual stakeholders.</i>
N/A	N/A	1 CCR 210-3	Enforcement and Hearing Procedures	N/A	§42-1-204, C.R.S.	Review pursuant to §24-4-103.3, C.R.S., Mandatory Review of Rules.	DMV and Hearings Division

## Hearings Division 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
<i>Anticipated Hearing Date (Month Year)</i>	<i>Anticipated Adoption Date (Month Year)</i>			<i>If only a part of a CCR is repealed, it should be classified as "revised".</i>	<i>If statutory, list C.R.S.</i>		<i>Consider including high-level outreach bullets.  Categories of stakeholders, not individual stakeholders.</i>
N/A	N/A	1 CCR 211-1	Rules for Hearings Related to Matters Other than Driver's Licenses or State Issued Identification Cards	Revision	§42-2-125, 126, 127, 127.7, 127.6, and 127.9, C.R.S.  Various parts of Title 42, C.R.S.	Review pursuant to §24-4-103.3, C.R.S., Mandatory Review of Rules. Clean up and clarify rules, streamline processes, and ensure statutory compliance.	Police agencies, attorney groups (defense attorneys /district attorneys), "the public", probation officers, advocacy groups
N/A	N/A	1 CCR 211-2	Rules for Hearings Related to Driver's Licenses or State Issued Identification Cards	Revision	§24-4-103, 42-1-204, 42-1-218.5, 42-2-122, 42-2-125, 42-2- 126, 42-2-127, 42-2-127.6, 42-2-127.7, 42-2-127.9, 42-2- 304.5, 42-2-405.5, and 42-2-409, C.R.S.  Various parts of Title 42, C.R.S.	Review pursuant to §24-4-103.3, C.R.S., Mandatory Review of Rules. Clean up and clarify rules, streamline processes, and ensure statutory compliance.	DMV, Police agencies, attorney groups (defense attorneys /district attorneys), "the public", probation officers, advocacy groups
N/A	N/A	1 CCR 211-3	Rules for the Length of Restriant and Issuance of Probationary Driver's Licenses	Revision	§24-4-103, 42-1-204, 42-2-126, 42-2-127, 42-2-127.6, and 42-2-127.9, C.R.S.  Various parts of Title 42, C.R.S.	Review pursuant to §24-4-103.3, C.R.S., Mandatory Review of Rules. Clean up and clarify rules, streamline processes, and ensure statutory compliance.	DMV, Police agencies, attorney groups (defense attorneys /district attorneys), "the public", probation officers, advocacy groups

## Marijuana Enforcement Division 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
Anticipated Hearing Date (Month Year)	Anticipated Adoption Date (Month Year)			If only a part of a CCR is repealed, it should be classified as "revised".	If statutory, list C.R.S.		Consider including high-level outreach bullets.  Categories of stakeholders, not individual stakeholders.
October 2019	November 2019	1 CCR 212-1	Medical Marijuana Rules	New and Revision	§44-11-101, et seq., C.R.S.	Planned review of all Medical Marijuana Rules as necessary to implement new legislation passed in the 2019 session of the General Assembly	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2	Retail Marijuana Rules	New and Revision	§44-12-101, et seq., C.R.S.	Planned review of all Retail Marijuana Rules as necessary to implement new legislation passed in the 2019 session of the General Assembly	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 101	Engaging in Business	Revision	§44-11-102, 44-11-202, and 44-11-901, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 101	Engaging in Business	Revision	§44-12-102, 44-12-202, and 44-12-901, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 102	Severability	Revision	§44-11-202, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 102	Severability	Revision	§44-12-202, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 201	Application Process	Revision	§44-11-104, 44-11-202, 44-11-301, 44-11-304, 44-11-305, 44-11-307, 44-11-310, 44-11-311, 44-11-313, 44-11-401, and 24-76.5-103, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.

## Marijuana Enforcement Division 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
October 2019	November 2019	1 CCR 212-2 R 201	Application Process	Revision	§44-12-102, 44-12-103, 44-12-202, 44-12-303, 44-12-306, 44-12-309, 44-12-312, 44-12-401, and 24-76.5-101, et seq., C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(III).	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 202.1	Applications, Agreements, Contracts and Certifications Required for Indirect Beneficial Interest Owners: Medical Marijuana Businesses	Revision	§44-11-104, 44-11-202, 44-11-304, 44-11-305, 44-11-307, 44-11-310, and 44-11-313, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 202.1	Applications, Agreements, Contracts and Certifications Required for Indirect Beneficial Interest Owners: Retail Marijuana Establishments	Revision	§44-12-103, 44-12-104, 44-12-202, 44-12-306, 44-12-309, and 44-12-312, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(III).	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 203	Process for Renewing a License - Medical Marijuana Businesses	Revision	§44-11-104, 44-11-202, 44-11-306, 44-11-310, and 44-11-311, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 203	Process for Renewing a License - Retail Marijuana Establishments	Revision	§44-12-103, 44-12-202, and 44-12-310, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(I).	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 204	Ownership Interests of a License: Retail Marijuana Establishments	Revision	§44-12-103, 44-12-202, 44-12-306, 44-12-309, 44-12-312, 44-12-601, 44-12-901, and 24-76.5-101 et seq., C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 204.5	Disclosure, Approval and Review of Business Interests	Revision	§44-12-103, 44-12-202, 44-12-303, 44-12-305, 44-12-306, 44-12-308, 44-12-309, and 44-12-312, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 207	Schedule of Application Fees: Medical Marijuana Businesses	Revision	§44-11-104, 44-11-202, and 44-11-401, C.R.S.	To review fee amounts to ensure they reflect the direct and indirect costs of the State Licensing Authority.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.

## Marijuana Enforcement Division 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
October 2019	November 2019	1 CCR 212-2 R 207	Schedule of Application Fees: Retail Marijuana Establishments	Revision	§44-12-103, 44-12-202, 44-12-306.5, and 44-12-401, C.R.S.	To review fee amounts to ensure they reflect the direct and indirect costs of the State Licensing Authority.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 208	Schedule of Business License Fees: Medical Marijuana Businesses	Revision	§44-11-104, 44-11-202, and 44-11-401, C.R.S.	To review fee amounts to ensure they reflect the direct and indirect costs of the State Licensing Authority.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 208	Schedule of Business License Fees: Retail Marijuana Establishments	Revision	§44-12-103, 44-12-202, 44-12-306.5, and 44-12-401, C.R.S.	To review fee amounts to ensure they reflect the direct and indirect costs of the State Licensing Authority.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 210	Schedule of Administrative Fees	Revision	§44-11-104, 44-11-202, and 44-11-401, C.R.S.	To review fee amounts to ensure they reflect the direct and indirect costs of the State Licensing Authority.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 210	Schedule of Administrative Fees	Revision	§44-12-103, 44-12-202, 44-12-306.5, and 44-12-401, C.R.S.	To review fee amounts to ensure they reflect the direct and indirect costs of the State Licensing Authority.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 301	Limited Access Areas	Revision	§44-11-105 and 44-11-202, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 301	Limited Access Areas	Revision	§44-12-103, 44-12-105, and 44-12-202, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 302	Possession of Licensed Premises	Revision	§44-11-202 and 44-11-308, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.



## Marijuana Enforcement Division 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
October 2019	November 2019	1 CCR 212-2 R 302	Possession of Licensed Premises	Revision	§44-12-202 and 44-12-307, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 401	Medical Marijuana Center: License Privileges	Revision	§44-11-202, 44-11-310, 44-11-402, and 44-11-406, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 401	Retail Marijuana Store: License Privileges	Revision	§44-12-202, 44-12-309, 44-12-402, 44-12-406, and 44-12-901, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 402	Registration of a Primary Medical Marijuana Center	Revision	§44-11-202, 44-11-310, 44-11-402, and 44-11-403, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 501	Optional Premises Cultivation Operation: License Privileges	Revision	§44-11-202, 44-11-310, 44-11-401, 44-11-402, 44-11-403, 44-11-404, and 44-11-406, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 501	Retail Marijuana Cultivation Facility: Licensed Privileges	Revision	§44-12-202, 44-12-401, 44-12-403, 44-12-404, and 44-12-406, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 502	Optional Premises Cultivation Operation: General Limitations or Prohibited Acts	Revision	§44-11-103, 44-11-201, 44-11-202, 44-11-310, 44-11-402, 44-11-403, and 44-11-406, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 503	Optional Premises Cultivation Operation: Inventory Tracking System	Revision	§44-11-202 and 44-11-403, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.

## Marijuana Enforcement Division 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
October 2019	November 2019	1 CCR 212-1 M 601	Medical Marijuana-Infused Products Manufacturer: License Privileges	Revision	§44-11-202, 44-11-404, and 44-11-406, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 601	Retail Marijuana Products Manufacturing Facilities: License Privileges	Revision	§44-12-202, 44-12-305, 44-12-309, 44-12-403, 44-12-404, and 44-12-406, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 701.5	Medical Marijuana Testing Facilities: License Privileges	Revision	§44-11-202, 44-11-310, 44-11-402, 44-11-404, 44-11-405, and 44-11-406, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 701	Retail Marijuana Testing Facilities: License Privileges	Revision	§44-12-202, 44-12-309, 44-12-402, 44-12-403, 44-12-404, 44-12-405, 35-61-104, and 35-61-105.5, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 702	Medical Marijuana Testing Facilities: General Limitations or Prohibited Acts	Revision	§44-11-202, 44-11-405, 44-11-901, and 35-61-105.5, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 702	Retail Marijuana Testing Facilities: General Limitations or Prohibited Acts	Revision	§44-12-105, 44-12-202, 44-12-405, 44-12-901, 35-61-104, and 35-61-105.5, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 801	Transport: All Medical Marijuana Businesses	Revision	§44-11-202 and 44-11-406, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 801	Transport: All Retail Marijuana Establishments	Revision	§44-12-202, 44-12-309, 44-12-401, and 44-12-406, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.

## Marijuana Enforcement Division 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
October 2019	November 2019	1 CCR 212-1 M 901	Business Records Required	Revision	§44-11-202, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 901	Business Records Required	Revision	§44-12-202, 44-12-301, and 44-12-701, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 1001-1	Packaging and Labeling: Minimum Requirements Prior to Transfer to a Medical Marijuana Business	Revision	§44-11-202, 44-11-402, and 44-11-404, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 1001-1	Packaging and Labeling: Minimum Requirements Prior to Transfer to a Retail Marijuana Establishment	Revision	§44-12-202, 44-12-402, and 44-12-404, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 1102	Advertising General Requirement: No Deceptive, False or Misleading Statements	Revision	§44-11-202 and 44-11-901, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 1102	Advertising General Requirement: No Deceptive, False or Misleading Statements	Revision	§44-12-202 and 44-12-901, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 1103	The Term "Minor" as Used in the Medical Code and These Rules	Revision	§44-11-202 and 44-11-901, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 1103	The Term "Minor" as Used in the Medical Code and These Rules	Revision	§44-12-202 and 44-12-901, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.

## Marijuana Enforcement Division 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
October 2019	November 2019	1 CCR 212-1 M 1201	Duties of Employees of the State Licensing Authority	Revision	§44-11-201, 44-11-202, 16-2.5-101, 16-2.5-121, and 16-2.5-124.5, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 1201	Duties of Employees of the State Licensing Authority	Revision	§44-12-202 and 44-12-602, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 1301	Disciplinary Process: Non-Summary Suspensions	Revision	§44-11-202, 44-11-601, and 24-4-105, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 1301	Disciplinary Process: Non-Summary Suspensions	Revision	§44-12-202, 44-12-601, and 24-4-105, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 1302	Summary Suspensions	Revision	§44-11-202, 44-11-601, 24-4-104, and 24-4-105, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 1302	Summary Suspensions	Revision	§44-12-202, 44-12-601, 24-4-104, and 24-4-105, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(i).	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 1401	Instructions for Local Licensing Authorities and Law Enforcement Officers	Revision	§44-11-202, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 1401	Instructions for Local Licensing Authorities and Law Enforcement Officers	Revision	§44-12-202 and 44-12-301, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.

## Marijuana Enforcement Division 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
October 2019	November 2019	1 CCR 212-1 M 1501	Medical Marijuana Testing Program - Contaminant Testing	Revision	§44-11-202, 44-11-402, and 44-11-404, C.R.S.	Review for revisions as part of rule review schedule.	Licenses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 1501	Retail Marijuana Testing Program - Contaminant Testing	Revision	§44-12-202, 44-12-402, 44-12-403, and 44-12-404, C.R.S.	Review for revisions as part of rule review schedule.	Licenses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 1601	Medical Marijuana Transporter: License Privileges	Revision	§44-11-202 and 44-11-406, C.R.S.	Review for revisions as part of rule review schedule.	Licenses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 1601	Retail Marijuana Transporter: License Privileges	Revision	§44-12-202 and 44-12-406, C.R.S.	Review for revisions as part of rule review schedule.	Licenses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 1701	Medical Marijuana Business Operator: License or Registration Privileges	Revision	§44-11-202 and 44-11-401, C.R.S.	Review for revisions as part of rule review schedule.	Licenses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 1701	Retail Marijuana Establishment Operator: License Privileges	Revision	§44-12-103, 44-12-202, 44-12-309, 44-12-401, 44-12-407, and 44-12-601, C.R.S.	Review for revisions as part of rule review schedule.	Licenses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 1801	Medical Research Facilities	Revision	§44-11-202 and 25-1.5-106.5, C.R.S.	Review for revisions as part of rule review schedule.	Licenses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-2 R 1801	Medical Research Facilities	Revision	§44-12-202 and 25-1.5-106.5, C.R.S.	Review for revisions as part of rule review schedule.	Licenses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.

## Marijuana Enforcement Division 2019 Regulatory Agenda

The Colorado Department of Revenue (CDOR) submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file their Agenda.

Per §2-7-202(6), C.R.S., the Agenda must contain:

(a) A list of new rules or revisions to existing rules that the department expects to propose in the next calendar year;

(b) The statutory or other basis for adoption of the proposed rules;

(c) The purpose of the proposed rules;

(d) The contemplated schedule for adoption of the rules;

(e) An identification and listing of persons or parties that may be affected positively or negatively by the rules.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Agenda as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Agenda.

The Agenda covers Calendar Year 2019 (CY19).

Schedule CY19	Schedule CY19	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders
October 2019	November 2019	1 CCR 212-1 M 1901	Licensed Research Businesses: License Privileges	Revision	§44-11-202, 44-11-404, 44-11-405, 44-11-408, 44-12-202, and 44-12-404, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 1902	Licensed Research Businesses: General Limitations or Prohibited Acts	Revision	§44-11-202, 44-11-310, 44-11-405, 44-11-408, and 44-12-202, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.
October 2019	November 2019	1 CCR 212-1 M 1903	Licensed Research Businesses: Inventory Tracking	Revision	§44-11-202 and 44-11-408, C.R.S.	Review for revisions as part of rule review schedule.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.

2018  
Colorado Department of Revenue  
Regulatory Agenda Report  
January 1, 2018 - December 31, 2018



## Taxpayer Service Division - Tax Group 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
<i>Include Actual Hearing or Adoption Date (Month Year)</i>			<i>If only a part of a CCR is repealed, it should be classified as "revised"</i>	<i>If statutory, list C.R.S.</i>		<i>Consider including high-level outreach bullet:</i> <i>Categories of stakeholders, not individual stakeholders.</i>	<i>Adopted/ Not Adopted/ Withdrawn/ Ongoing/ Reviewed</i>	<i>Select one of the following options:</i> <i>YES: If the rule was published in the CY17 Agenda, or</i> <i>NO: If the rule was unpublished or an emergency rule.</i>
Adopted June 12, 2018	1 CCR 201-4 Regulation 39-26-102.14	State Treasurer	Repeal	§39-26-102(14), C.R.S.	Review pursuant to 24-4-103.3, C.R.S.	All retailers, Tax Practitioners	Adopted	No
Adopted June 12, 2018	1 CCR 201-4 Regulation 39-26-102.22	Disputes	Repeal	§39-26-102(22), C.R.S.	Move content of rule into Regulation 39-26-105(3).	All retailers, Tax Practitioners	Adopted	No
Adopted June 12, 2018	1 CCR 201-4 Regulation 39-26-105.1 (c)	Documenting Exempt Sales	Repeal	§39-26-105(1)(c), C.R.S.	Move content of rule into Regulation 39-26-105(3)	All retailers, Tax Practitioners	Adopted	No
Adopted June 12, 2018	1 CCR 201-4 Regulation 39-26-105(3)	Documenting Exempt Sales	New Rule	§39-26-105(3) and 39-26-102(22), C.R.S.	Establish the requirements a retailer must meet to be relieved of liability for the collection of sales and use tax.	All retailers, Tax Practitioners	Adopted	No
Adopted June 12, 2018	1 CCR 201-4 Regulation 39-26-713.2 (c)	Cross Reference	Repeal	§39-26-713(2)(c), C.R.S.	Review pursuant to 24-4-103.3, C.R.S.	All retailers, Tax Practitioners	Adopted	No
Adopted June 12, 2018	1 CCR 201-4 Regulation 39-26-718	Charitable Organizations	Revision	§39-26-718, C.R.S.	Amend the dollar threshold for use of check or credit card for exempt purchases.	Charitable Organization, All retailers, Tax Practitioners	Adopted	No
Adopted June 20, 2018	1 CCR 201-2 Regulation 39-22-622	Income Tax Refunds	Revision	§39-21-112(1) and 39-22-622, C.R.S.	Revise rule to reflect changes to statute made by Senate Bill 17-194.	Income taxpayers, tax practitioners	Adopted	Yes
Adopted June 20, 2018	1 CCR 201-2 Regulation 39-22-526	Credit for environmental remediation of contaminated land	New rule	§39-21-112(1) and 39-22-526, C.R.S.	Establish rules for transferring the credit.	Income taxpayers, CDPHE, environmental mediation services, credit brokers, tax practitioners	Adopted	Yes
Adopted June 20, 2018	1 CCR 201-2 Regulation 39-22-104(3) (g)	Gross conservation easement addition	Revision	§39-21-112(1) and 39-22-104(3)(g), C.R.S.	Revise existing rule to conform to statute.	Gross conservation easement donors and donees, tax practitioners	Adopted	Yes
Adopted June 20, 2018	1 CCR 201-2 Regulation 39-22-304(2) (f)	Gross conservation easement addition	Revision	§39-21-112(1) and 39-22-304(2)(f), C.R.S.	Revise existing rule to conform to statute.	Gross conservation easement donors and donees, tax practitioners	Adopted	Yes
Adopted June 21, 2018	1 CCR 201-2 Regulation 39-22-604	Withholding tax	New rule	§39-21-112(1) and 39-22-604, C.R.S.	Consolidate and clarify separate wage withholding rules.	Employers, payroll companies, tax practitioners	Adopted	Yes
Adopted June 21, 2018	1 CCR 201-2 Regulation 39-22-604.1	Withholding tax	Repeal	§39-21-112(1) and 39-22-604, C.R.S.	Repeal rule and replace with consolidated rule 39-22-604.	Employers, payroll companies, tax practitioners	Adopted	Yes
Adopted June 21, 2018	1 CCR 201-2 Regulation 39-22-604.3	Requirement to Withhold	Repeal	§39-21-112(1) and 39-22-604, C.R.S.	Repeal rule and replace with consolidated rule 39-22-604.	Employers, payroll companies, tax practitioners	Adopted	Yes
Adopted June 21, 2018	1 CCR 201-2 Regulation 39-22-604(4)	Withholding Tax Filing Periods and Due Dates	Repeal	§39-21-112(1) and 39-22-604, C.R.S.	Repeal rule and replace with consolidated rule 39-22-604.	Employers, payroll companies, tax practitioners	Adopted	Yes
Reviewed September 2018	1 CCR 201-2 Regulation 39-22-604.17	Withholding of Winnings	N/A	§39-21-112(1) and 39-22-604, C.R.S.	No changes recommended.	Gaming Industry	Reviewed	No
Adopted June 21, 2018	1 CCR 201-4 Regulation 39-26-105	Remittance of sales tax	Revision	§39-21-112(1), 39-26-105, and 39-26-107, C.R.S.	Clarify sales tax remittance requirements.	Retailers, local governments, tax preparers	Adopted	Yes
Adopted June 21, 2018	1 CCR 201-4 Regulation 39-26-105.5	Manatory Electronic Funds Transfer	Repeal	§39-21-112(1) and 39-26-105.5, C.R.S.	Move the requirements in this rule to Special Rule 1 Electronic Funds Transfer.	Every taxpayer, Tax Practitioners	Adopted	No
Adopted June 21, 2018	1 CCR 201-1 Regulation 39-21-119	Date Documents of Payments Considered Made	New Rule	§39-21-112(1), 39-21-119, 39-21-120, 39-27-117, 38-28.5-106, 39-28.8-201, and 39-28.8-202, C.R.S.	Define the date documents or payments are considered filed with or made to the Department.	Every taxpayer, Tax Practitioners	Adopted	Yes
Adopted June 21, 2018	1 CCR 201-1 Special Regulation 1	EFT payments	Revision	§39-21-112(1), 39-22-604(4)(a), 39-26-105.5, 39-27-105.3, 39-28-104, and 39-28.5-106, C.R.S.	Promulgate rules regarding EFT payment as directed by House Bill 17-1136.	Taxpayer's (income tax, sales tax, cigarette tax, tobacco tax, and fuel tax), tax practitioners	Adopted	Yes
Withdrawn	1 CCR 201-2 Regulation 39-22-601 (2.5) & (5)	Withholding for nonresident partners and shareholders	New rule	§39-21-112(1) and 39-22-601(2.5) and (5), C.R.S.	Establish rules governing withholding for nonresident partners and shareholders.	Partnerships, S corporations, LLCs, tax practitioners	Withdrawn	Yes
Adopted September 18, 2018	1 CCR 201-2 Regulation 39-22-1001	Voluntary Contributions	New rule	§39-21-112, 39-22-701, et seq., 39-22-801, et seq., and 39-22-1001, et seq., C.R.S.	Establish rules for making voluntary contributions from and income tax refund claimed on an individual income tax return.	Individual income taxpayers, charitable organizations	Adopted	Yes
Adopted September 18, 2018	1 CCR 201-19 Regulation 39-30.5-101	Rural jump-start zone act	New rule	§39-21-112(1) and 39-30.5-101, et seq., C.R.S.	Establish rules for rural jump-start zone income tax and sales tax incentives.	Economic Development Commission, Rural Jump-Start Zones	Adopted	Yes



## Taxpayer Service Division - Tax Group 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
<i>Include Actual Hearing or Adoption Date (Month Year)</i>			<i>If only a part of a CCR is repealed, it should be classified as "revised"</i>	<i>If statutory, list C.R.S.</i>		<i>Consider including high-level outreach bullet:</i> <i>Categories of stakeholders, not individual stakeholders.</i>	<i>Adopted/ Not Adopted/ Withdrawn/ Ongoing/ Reviewed</i>	<i>Select one of the following options: YES: If the rule was published in the CY17 Agenda, or NO: If the rule was unpublished or an emergency rule.</i>
Adopted September 18, 2018	1 CCR 201-1 Regulation 39-21-120	Signature and Filing Alternatives	Revision	§39-21-112(1), 39-21-119, 39-21-120, 39-27-117, and 24-71.3-102, et seq., C.R.S.	Define and implement acceptable alternatives to file and sign tax returns and other documents.	Every taxpayer, Tax Practitioners	Adopted	No
Adopted September 18, 2018	1 CCR 201-7 Regulation 39-28-104	Filing Cigarette Tax Returns and Wholesaler's Service Fee	Revision	§39-21-112, 39-28-104, and 39-28-109, C.R.S.	Require wholesalers to file returns electronically and clarify conditions under which a wholesaler is eligible to deduct a service fee from the tax they remit.	Cigarette Taxpayers	Adopted	No
Adopted September 18, 2018	1 CCR 201-7 Regulation 39-28.5-106	Filing Tobacco Products Tax Returns and Distributor's Service Fee	Revision	§39-21-112 and 39-28.5-106, C.R.S.	Require distributors to file returns electronically and clarify conditions under which a distributor is eligible to deduct a service fee from the tax they remit.	Tobacco Products Taxpayers	Adopted	No
Hearing October 30, 2018	1 CCR 201-4 Regulation 39-26-102 (1.3)	Auctioneers	Revision	§39-21-112(1), 39-26-102(1.3), (8), (9), and (10), 39-26-104; 39-26-105, and 39-26-106, C.R.S.	Conform the rule to changes made to Regulation 39-26-102(9) regarding the sourcing of sales.	All retailers, Tax Practitioners	Ongoing	No
Hearing October 30, 2018	1 CCR 201-4 Regulation 39-26-102.3	Doing Business in this State	Repeal	§39-21-112(1) and 39-26-102(3), C.R.S.	Repeal the rule in accordance with changes made to Regulations 39-26-105 and 39-26-204(2) regarding the criteria that determine a retailer's liability and responsibility to collect sales and use tax.	All retailers, Tax Practitioners	Ongoing	No
Hearing October 30, 2018	1 CCR 201-4 Regulation 39-26-102.9	Retail Sale	Revision	§29-2-105(1)(b), 39-21-112(1), 39-26-102(9), 39-26-102(10), 39-26-104, 39-26-107, 39-26-204(2), and 39-26-713, C.R.S.	Establish the location to which a retail sale is sourced within Colorado.	All Retailers, local governments	Ongoing	Yes
Hearing October 30, 2018	1 CCR 201-4 Regulation 39-26-103.5	Direct Payment Permit	Revision	§39-21-112(1), 39-26-102(8), 39-26-102(9), and 39-26-102(10), and 39-26-103.5, C.R.S.	Conform the rule to changes made to Regulation 39-26-102(9) regarding the sourcing of sales.	All retailers, Tax Practitioners	Ongoing	No
Hearing October 30, 2018	1 CCR 201-4 Regulation 39-26-104(1)(b)(i)	Exchanged Tangible Personal Property	Revision	§39-21-112(1) and 39-26-104(1)(b)(i), C.R.S.	Conform the rule to changes made to Regulation 39-26-102(9) regarding the sourcing of sales.	All retailers, Tax Practitioners	Ongoing	No
Hearing October 30, 2018	1 CCR 201-4 Regulation 39-26-105	Remittance of sales tax	Revision	§39-21-112(1), 39-26-105, and 39-26-107, C.R.S.	Clarify the criteria that determine a retailer's liability and responsibility to collect sales tax and to conform the rule to the U.S. Supreme Court's decision in <i>South Dakota v. Wayfair, Inc.</i> , 138 S. Ct. 2080 (2018).	Retailers, local governments, tax preparers	Adopted	Yes
Hearing October 30, 2018	1 CCR 201-4 Regulation 39-26-105(1)(a)	Tax Rate	Repeal	§39-21-112(1), 39-26-105, 39-26-106, and 39-26-107, C.R.S.	Repeal the rule to conform to changes made to Regulation 39-26-102(9) regarding the sourcing of sales.	All retailers, Tax Practitioners	Ongoing	No
Hearing October 30, 2018	1 CCR 201-4 Regulation 39-26-204(2)	Retailer's Use Tax	Revision	§39-21-112(1) and 39-26-204(2), C.R.S.	Clarify the criteria that determine a retailer's obligation to collect use tax and to conform the rule to the U.S. Supreme Court's decision in <i>South Dakota v. Wayfair, Inc.</i> , 138 S. Ct. 2080 (2018).	All retailers, Tax Practitioners	Ongoing	No
Hearing October 30, 2018	1 CCR 201-4 Regulation 39-26-704(2)	Miscellaneous Sales Tax Exemptions	Revision	§39-21-112(1) and 39-26-704(2), C.R.S.	Conform the rule to changes made to Regulation 39-26-102(9) regarding the sourcing of sales.	All retailers, Tax Practitioners	Ongoing	No
Hearing October 30, 2018	1 CCR 201-13 Regulation 39-30-103.5	Credit for Enterprise Zone Contribution	Revision	§39-21-112(1), 39-30-103.5, and 39-30-108(1), C.R.S.	Conform the rule to statute and to clarify qualifications and limitations for the enterprise zone contribution credit.	Enterprise Zone Businesses and Administrators, Qualifying Projects, Programs, and Organizations	Ongoing	No
Hearing October 30, 2018	1 CCR 201-13 Regulation 39-30-104(4)	Enterprise Zone Qualified Job Training Program Investment Credit	Repeal	§39-21-112(1), 39-30-104(4), and 39-30-108(1), C.R.S.	Repeal the rule as it provides no additional clarification of the related statute.	Enterprise Zone Businesses and Administrators	Ongoing	No
Hearing October 30, 2018	1 CCR 201-13 Regulation 39-30-105.5	Enterprise Zone Research and Experimental Expenditures Credit	Repeal	§39-21-112(1), 39-30-105.5, and 39-30-108(1), C.R.S.	Repeal the rule as it provides no additional clarification of the related statute.	Enterprise Zone Businesses and Administrators	Ongoing	No
Hearing October 30, 2018	1 CCR 201-13 Regulation 39-30-105.6	Credit for Rehabilitation of Vacant Enterprise Zone Buildings	Repeal	§39-21-112(1), 39-30-105.6, and 39-30-108(1), C.R.S.	Repeal the rule as it provides no additional clarification of the related statute.	Enterprise Zone Businesses and Administrators	Ongoing	No
Hearing October 30, 2018	1 CCR 201-13 Regulation 39-30-106	Enterprise Zone Machinery and Machine Tool Sales Tax Exemption	Repeal	§39-21-112(1), 39-30-106, and 39-30-108(1), C.R.S.	Repeal the rule as it provides no additional clarification of the related statute.	Enterprise Zone Businesses and Administrators	Ongoing	No
Hearing October 30, 2018	1 CCR 201-13 Regulation 39-30-108	Certifications	Repeal	§39-21-112(1) and 39-30-108, C.R.S.	Repeal the rule as it provides no additional clarification of the related statute.	Enterprise Zone Businesses and Administrators	Ongoing	No
Hearing October 30, 2018	1 CCR 201-14 Regulation 39-32-105(1)	Rural Technology Enterprise Zone Income Tax Credit	Repeal	§39-21-112(1) and 39-32-105, C.R.S.	Repeal the rule because the credit was last allowed in 2004 and could be carried forward for no more than 10 years.	Enterprise Zone Businesses and Administrators	Ongoing	No
Hearing Nov/Dec 2018	1 CCR 201-2 Regulation 39-22-119	Child Care Expense Credit	Revision	§39-21-112(1) and 39-22-119, C.R.S.	Update to conform with HB18-1208.	All taxpayers, Tax Practitioners	Ongoing	No
Hearing Nov/Dec 2018	1 CCR 201-2 Regulation 39-22-121	Child Care Contribution Credit	Revision	§39-21-112(1) and 39-22-121, C.R.S.	Update to conform with HB18-1004.	All taxpayers, Tax Practitioners, Child Care Facilities	Ongoing	No

## Taxpayer Service Division - Tax Group 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are be marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
<small>Include Actual Hearing or Adoption Date (Month/Year)</small>			<small>If only a part of a CCR is repealed, it should be classified as "revised".</small>	<small>If statutory, list C.R.S.</small>		<small>Consider including high-level outreach bullets. Categories of stakeholders, not individual stakeholders.</small>	<small>Adopted/ Not Adopted/ Withdrawn/ Ongoing/ Reviewed</small>	<small>Select one of the following options: YES: If the rule was published in the CY17 Agenda, or NO: If the rule was unplanned or an emergency rule.</small>
Hearing Nov/Dec 2018	1 CCR 201-2 Regulation 39-22-2102	Affordable Housing Tax Credit	Revision	§39-21-112(1) and 39-22-2102, C.R.S.	Update to conform with SB18-007.	Contractors, Housing Authorities, Tax Practitioners	Ongoing	No
Hearing Nov/Dec 2018	1 CCR 201-2 Regulation 39-22-522	Conservation Easement Credit	Revision	§39-21-112(1) and 39-22-522, C.R.S.	Update to conform to HB18-1291.	All taxpayers, Tax Practitioners, Land Trusts	Ongoing	No
Hearing Nov/Dec 2018	1 CCR 201-4 Regulation 39-26-718	Charitable Organizations	Revision	§39-21-112(1), 39-26-107, and 39-26-718, C.R.S.	Update to conform to HB18-1218.	Charitable Organizations, Tax Practitioners	Ongoing	No
Hearing Nov/Dec 2018	1 CCR 201-18 Regulation 39-28.8-302	Retail Marijuana Excise Tax	Revision	§39-21-112(1) and 39-28.8-302, C.R.S.	Update to conform with SB18-259.	Marijuana Industry, Tax Practitioners	Ongoing	No

## Liquor Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
<i>Include Actual Hearing or Adoption Date (Month Year)</i>			<i>If only a part of a CCR is repealed, it should be classified as "revised"</i>	<i>If statutory, list C.R.S.</i>		<i>Consider including high-level outreach bullet.</i> <i>Categories of stakeholders, not individual stakeholders.</i>	<i>Adopted/ Not Adopted/ Withdrawn/ Ongoing/ Reviewed</i>	<i>Select one of the following options: YES: If the rule was published in the CY17 Agenda, or NO: If the rule was unpublished or an emergency rule.</i>
Hearing November 2018	1 CCR 203-2 Regulation 47-002	Fermented Malt Beverages - Advertising Practices	Repeal	§44-3-202, C.R.S.	To ensure statutory compliance.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	Yes
Hearing November 2018	1 CCR 203-2 Regulation 47-004	Fermented Malt Beverages - Possession of Alcohol Liquors	Revision	§44-3-202, C.R.S.	To ensure statutory compliance.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	Yes
Hearing November 2018	1 CCR 203-2 Regulation 47-006	Fermented Malt Beverages - Identification and Labeling	Repeal	§44-3-202, C.R.S.	To ensure statutory compliance.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	Yes
Hearing November 2018	1 CCR 203-2 Regulation 47-008	Fermented Malt Beverages - Limitations of License	Revision	§44-3-202, C.R.S.	To ensure statutory compliance.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	Yes
Hearing November 2018	1 CCR 203-2 Regulation 47-010	Items Approved for Sale in Fermented Malt Beverage Off-Premises Licenses	New Rule	§44-3-202, C.R.S.	To ensure statutory compliance and to clarify requirements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-100	Definitions	Revision	§44-3-202, C.R.S.	To make grammatical improvements and to clarify requirements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	Yes
Hearing November 2018	1 CCR 203-2 Regulation 47-104	Winery Direct Shipper's Permits	New Rule	§44-3-202, C.R.S.	To clarify a requirement.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-200	Petitions for Statements of Position and Declaratory Orders Concerning the Colorado Liquor Code, Colorado Beer Code, Special Event Code, or Colorado Liquor Rules	Revision	§44-3-202, C.R.S.	To make grammatical improvements, and to clarify requirements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	Yes
Reviewed June 2018	1 CCR 203-2 Regulation 47-300	Change in Class of License	N/A	§44-3-202, C.R.S.	No changes recommended.	LED, all liquor licensees, local licensing authorities, general public	Reviewed	Yes
Hearing November 2018	1 CCR 203-2 Regulation 47-301	Undue Concentration of Licenses	Revision	§44-3-202, C.R.S.	To make grammatical improvements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	Yes
Hearing November 2018	1 CCR 203-2 Regulation 47-302	Changing, Altering, or Modifying Licensed Premises	Revision	§44-3-202, C.R.S.	To make grammatical improvements and to clarify requirements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	Yes
Hearing November 2018	1 CCR 203-2 Regulation 47-303	License Renewal	Revision	§44-3-202, C.R.S.	To make grammatical improvements and to clarify requirements	LED, all liquor licensees, local licensing authorities, general public	Ongoing	Yes
Hearing November 2018	1 CCR 203-2 Regulation 47-304	Transfer of Ownership and Changes in Licensed Entities	Revision	§44-3-202, C.R.S.	To make grammatical improvements and to clarify requirements	LED, all liquor licensees, local licensing authorities, general public	Ongoing	Yes
Hearing November 2018	1 CCR 203-2 Regulation 47-305	Transfers - Wholesaler Confirmation	Revision	§44-3-202, C.R.S.	To make grammatical improvements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	Yes
Hearing November 2018	1 CCR 203-2 Regulation 47-306	Change of Trade Name	Revision	§44-3-202, C.R.S.	To clarify requirements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	Yes
Hearing November 2018	1 CCR 203-2 Regulation 47-307	Master Files	Revision	§44-3-202, C.R.S.	To clarify requirements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-310	Application - General Provisions	Revision	§44-3-202, C.R.S.	To make grammatical improvements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-313	Tastings	New Rule	§44-3-202, C.R.S.	To ensure statutory compliance.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No

## Liquor Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing November 2018	1 CCR 203-2 Regulation 47-314	Limited Liability Company	Revision	§44-3-202, C.R.S.	To make grammatical improvements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-315	Lodging and Entertainment License	Revision	§44-3-202, C.R.S.	To clarify requirements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-316	Advertising Practices	Revision	§44-3-202, C.R.S.	To make grammatical improvements and to clarify requirements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-318	Owner-Manager	Revision	§44-3-202, C.R.S.	To make grammatical improvements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-319	Liquor-Licensed Drugstore manager Permit	Revision	§44-3-202, C.R.S.	To make grammatical improvements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-321	Bona Fide Loyalty or Rewards Programs - Discounted Sales - Close Out Sales	New Rule	§44-3-202, C.R.S.	To ensure statutory compliance.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-322	Unfair Trade Practices and Competition	Revision	§44-3-202, C.R.S.	To make grammatical improvements, to ensure statutory compliance, and to clarify requirements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-326	Distance Restriction - Applicability and Measurement	Revision	§44-3-202, C.R.S.	To make grammatical improvements and to ensure statutory compliance.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-407	Liquor-Licensed Drugstore	Revision	§44-3-202, C.R.S.	To make grammatical improvements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-418	Restaurants	Revision	§44-3-202, C.R.S.	To clarify requirements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-426	Delivery of Alcohol Beverages	Revision	§44-3-202, C.R.S.	To make grammatical improvements and to ensure statutory compliance.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-428	Manufacturer Sales ROoms	Revision	§44-3-202, C.R.S.	To make grammatical improvements and to clarify requirements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-432	Colorado Manufacturers - Alternating Proprietor Licensed Premises	Revision	§44-3-202, C.R.S.	To make grammatical improvements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-500	Excise Tax Audits	Revision	§44-3-202, C.R.S.	To make grammatical improvements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Effective August 2018 (temporary)	1 CCR 203-2 Regulation 47-506	Fees	Revision	§44-3-202 and 44-3-501, C.R.S.	To reflect the direct and indirect costs of the liquor enforcement division and the state licensing authority.	LED, all liquor licensees, local licensing authorities, general public	Adopted	No
Hearing September 2018 (permanent)	1 CCR 203-2 Regulation 47-506	Fees	Revision	§44-3-202 and 44-3-501, C.R.S.	To reflect the direct and indirect costs of the liquor enforcement division and the state licensing authority.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-506	Fees	Revision	§44-3-202, C.R.S.	To clarify requirements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-600	Complaints Against Licensees - Suspension and Revocation of Licenses	Revision	§44-3-202, C.R.S.	To make grammatical improvements and to clarify requirements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-601	Assurance of Voluntary Compliance	Revision	§44-3-202, C.R.S.	To make grammatical improvements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-605	Responsible Alcohol Beverage Vendor Permitted Tastings by Retail Liquor Stores and Liquor-Licensed Drugstores	Revision	§44-3-202, C.R.S.	To make grammatical improvements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No

## Liquor Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S. The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing November 2018	1 CCR 203-2 Regulation 47-700	Inspection of Licensed Premises	Revision	§44-3-202, C.R.S.	To clarify requirements and to simplify language.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-900	Conduct of Establishment	Revision	§44-3-202, C.R.S.	To correct a typographical error.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-901	Public Consumption of Alcohol Beverages	New Rule	§44-3-202, C.R.S.	To ensure statutory compliance.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-904	Product Labeling, Substitution, Sampling and Analysis	Revision	§44-3-202, C.R.S.	To make grammatical improvements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-905	Colorado Wineries - Labeling and Records	Revision	§44-3-202, C.R.S.	To make grammatical improvements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-913	Age of Employees	Revision	§44-3-202, C.R.S.	To ensure statutory compliance, to make grammatical improvements, and to clarify requirements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-914	Unlicensed Possession of Beverages	Revision	§44-3-202, C.R.S.	To ensure statutory compliance, and to clarify requirements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-918	Removal of Alcohol Beverages from Premises	Revision	§44-3-202, C.R.S.	To ensure statutory compliance.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-924	Importation and Sole Source of Supply/Brand Registration	Revision	§44-3-202, C.R.S.	To ensure statutory compliance.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-926	Interference with Officers	Revision	§44-3-202, C.R.S.	To make grammatical improvements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-930	Testing of Alcohol Content - Malt Liquor and Fermented Malt Beverage	Repeal	§44-3-202, C.R.S.	To ensure statutory compliance.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-1000	Qualifications for Special Event Permit	Revision	§44-3-202, C.R.S.	To ensure statutory compliance.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-1002	Application for Special Event Permit	Revision	§44-3-202, C.R.S.	To make grammatical improvements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No
Hearing November 2018	1 CCR 203-2 Regulation 47-1010	Special Event Permit - Possession of Beverages	Revision	§44-3-202, C.R.S.	To ensure statutory compliance, and to clarify requirements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	Yes
Hearing November 2018	1 CCR 203-2 Regulation 47-1012	Special Event Permit - Permitted Age of Servers	Revision	§44-3-202, C.R.S.	To ensure statutory compliance, and to clarify requirements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	Yes
Hearing November 2018	1 CCR 203-2 Regulation 47-1014	Special Event Permit - Complaint Against Permittee - Cancellation - Revocation of Permit	Revision	§44-3-202, C.R.S.	To make grammatical improvements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	Yes
Hearing November 2018	1 CCR 203-2 Regulation 47-1016	Special Event Permit - Purchase and Storage of Alcohol Beverages	Revision	§44-3-202, C.R.S.	To make grammatical improvements and to clarify requirements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	Yes
Hearing November 2018	1 CCR 203-2 Regulation 47-1020	Alcohol Beverage Donations	Revision	§44-3-202, C.R.S.	To make grammatical improvements.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	Yes
Hearing November 2018	1 CCR 203-2 Regulation 47-1022	Donated Alcohol Beverages in Sealed Containers for Auction for Fundraising Purposes	New Rule	§44-3-202, C.R.S.	To ensure statutory compliance.	LED, all liquor licensees, local licensing authorities, general public	Ongoing	No

## Division of Motor Vehicles 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Include Actual Hearing or Adoption Date (Month/Year)			If only a part of a CCR is repealed, it should be classified as "revised"	If statutory, list C.R.S.		Consider including high-level outreach bullet. Categories of stakeholders, not individual stakeholders.	Adopted/ Not Adopted/ Withdrawn/ Ongoing/ Reviewed	Select one of the following options: YES: If the rule was published in the CY17 Agenda, or NO: If the rule was unpublished or an emergency rule.
9/29/18 (Hearing)	1 CCR 204-1 Rule 1	Diesel Inspection Program	Revision	§24-4-101 through 24-4-108, 42-4-401 through 42-4-414, 42-9-101 through 42-9-113, and 25-7-122.1, C.R.S.	Reviewed pursuant to 24-4-103.3, C.R.S., Mandatory Review of Rules.	Diesel vehicle owners, Inspection facilities, County Clerks Offices	Ongoing	Yes
1/14/2018	1 CCR 204-6 Regulations 42-2-101 & 42-2-114	Rules and Regulation for Classification of Driver's Licenses	Repeal	No statute listed in rule other than 42-2-101 & 42-2-114	Repealed because the rule outlined different classifications of driver licenses that were no longer used in statute. The rule had not been reviewed in a number of years and was contrary to the Federal Code of Regulations, C.R.S. and existing rules.	Vehicle Owners, License Holders, Drivers License Offices	Reviewed/Repealed	No
8/30/2018	1 CCR 204-10 Rule 1	Temporary Special Event License Plates	Revision	§42-1-102(24.5), 42-1-102(41.5), 42-1-204, 42-3-220, 42-3-301, 42-4-110, and 42-4-242, C.R.S.	Part of 2019 Regulatory Agenda, completed ahead of schedule in 2018.	Special event entities, Colorado Correctional Industries	Reviewed/Adopted	Yes
4/14/2018	1 CCR 204-10 Rule 2	Establish Vehicle Registration Period	Revision	§42-1-204, 42-3-102, 42-3-103, 42-3-104, 42-3-106, 42-3-107, 42-3-112, 42-3-114, 42-3-115, 42-3-116, 42-3-201, 42-3-202, 42-3-203, 42-3-211, 42-3-301, 42-3-304, 42-3-306, 43-4-506(1)(k), 43-4-804(1)(a)(i), 43-4-805(5)(g)(i), 42-12-301, and 42-12-401 C.R.S.	Reviewed pursuant to 24-4-103.3, C.R.S., Mandatory Review of Rules.	Vehicle owners, County Clerk and Recorders	Reviewed/Adopted	Yes
5/30/2018	1 CCR 204-10 Rule 5	Fleet Registration Program	Revision	§42-1-102(35), 42-1-102(36), 42-1-204, 42-3-107(16)(f), 42-3-107(27), 42-3-113(8)(a)(ii), and 42-3-125, C.R.S.	Reviewed pursuant to 24-4-103.3, C.R.S., Mandatory Review of Rules.	Fleet vehicle owners, County Clerk and Recorders	Reviewed/Adopted	Yes
2/14/2018	1 CCR 204-10 Rule 11	Emergency Vehicle Authorization	Revision	§24-4-104, 24-4-105, 42-1-102(6), 42-1-204, 42-4-108(5), 42-4-213, and 42-4-238, C.R.S.	Review pursuant to review from the Office of Legislative Legal Services.	Emergency Vehicle Authorizers, Emergency Vehicle Operators, local governments	Reviewed/Adopted	No
9/30/2018	1 CCR 204-10 Rule 12	Obtaining Record for Abandoned Motor Vehicles	Revision	§42-1-204, C.R.S.  Part 18 of Article 4 of Title 42, and Part 21 of Article 4 of Title 42, C.R.S.	Reviewed because the rule required amendments to meet new system requirements with the implementation of DRIVES	Tow Operators, Towing Law Enforcement Agencies, Repair Shops, Insurance Companies, County Clerk and Recorders	Reviewed/Adopted	No
4/30/2018	1 CCR 204-10 Rule 16	Group Special License Plates	Revision	§42-1-102(41.5), 42-1-204, 42-3-207, 42-3-208 and 42-3-301, C.R.S.	Reviewed because the rule required amendments to meet new system requirements with the implementation of DRIVES	Group Special License Plate Non-Profits, Colorado Correctional Industries, County Clerk and Recorders	Reviewed/Adopted	No
8/30/2018	1 CCR 204-10 Rule 18	Satisfactory Evidence of Vehicle Ownership	Revision	§42-1-204, 42-6-104, 42-6-106, 42-6-107, 42-6-109, 42-6-110, 42-6-113, 42-6-114, 42-6-115, and 42-6-119, C.R.S.	Reviewed pursuant to 24-4-103.3, C.R.S., Mandatory Review of Rules.	Vehicle Owner's, County Clerk and Recorders, Insurance Companies, Dealerships	Reviewed/Adopted	Yes
5/15/2018	1 CCR 204-10 Rule 20	License Plate Retirement	Revision	§42-1-204, 42-3-207, 42-3-212(7), 42-3-214(7), 42-3-221(6), 42-3-222(6), 42-3-223(6), 42-3-224(2)(a), 42-3-225(2)(b), 42-3-226(2)(a), 42-3-227(6), 42-3-228(6), 42-3-229(2)(a), 42-3-230(6), 42-3-231(6)(a), 42-3-232(6)(a), 42-3-233(6), 42-3-234(6)(a), 42-3-237(6), 42-3-238(2)(a), 42-3-239(2)(a), 42-3-240(2)(a), 42-3-241(2)(a), 42-3-242(2)(a), 42-3-243(2)(a), 42-3-244(2)(a), 42-3-245(2)(a), 42-3-246(2)(a), 42-3-247(2)(a), 42-3-248(2)(a), 42-3-249(2)(a), 42-3-250(2)(a), and 42-3-251(2)(a), C.R.S.	Reviewed because of policy changes with how the DMV retires license plates where the statutory language is "may retire" required amendments	Group Special License Plate Non-Profits, Alumni Associations, County Clerk and Recorders, Colorado Correctional Industries	Reviewed/Adopted	No
8/30/2018 (Hearing)	1 CCR 204-10 Rule 26	Physical Inspection of Motor Vehicles	Revision	§42-1-204, 42-3-105(1)(c)(i), 42-5-202, 42-5-204, 42-5-207, 42-6-107(1)(b), 42-6-117(2), 42-6-119, and 42-12-202, C.R.S.	Reviewed pursuant to 24-4-103.3, C.R.S., Mandatory Review of Rules.	Colorado State Patrol, County Clerk and Recorders	Ongoing	Yes
9/30/2018	1 CCR 204-10 Rule 31	Salvage and Rebuilt from Salvage Certificate of Title Requirements	Repeal	38-20-116(2.5), 42-6-102 (10), (15), (16), (17), and (23), 42-6-104, 42-6-110, 42-6-116 and 42-6-136.5, and 42-6-206, C.R.S.	Repealed because all requirements in the rule were duplicated with C.R.S.	Vehicle Owners, VIN Inspectors, Insurance Companies, County Clerk and Recorder	Reviews/Repealed	Yes
7/27/2018 (Hearing)	1 CCR 204-10 Rule 33	Special Use Trucks	Revision	§42-1-102(108), 42-1-204, 42-3-306(5)(c), and 42-3-306(9)(d), (f), (g) & (h), C.R.S.	Reviewed pursuant to 24-4-103.3, C.R.S., Mandatory Review of Rules.	Special Use Vehicle Owners, County Clerk and Recorders	Ongoing	Yes
9/30/2018	1 CCR 204-10 Rule 34	Dealer Issued Temporary Registration Permits	Revision	§42-1-204 and 42-3-203(3)(b), C.R.S.	Reviewed pursuant to 24-4-103.3, C.R.S., Mandatory Review of Rules.	Dealerships, Colorado Correctional Industries	Reviewed/Adopted	Yes
6/14/2018	1 CCR 204-10 Rule 39	Cancel Record	Repeal	38-20-116(2.5), 38-29-118, 42-4-1805 (2), 42-4-1810, 42-4-2104, 42-4-2109, 42-4-2201, 42-4-2202, 42-6-102, 42-6-104, 42-6-115, 42-6-136 and 42-9-102 C.R.S.	Repealed because all requirements in the rule were duplicated with C.R.S. or procedural requirements on the Department not needed to be memorialized in a rule	Vehicle Owners, County Clerk and Recorders	Reviewed/Repealed	Yes

## Division of Motor Vehicles 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are be marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
8/14/2018	1 CCR 204-10 Rule 43	Stolen Motor Vehicles	Revision	§42-3-118(2)(a) and 42-6-145(3)(b), C.R.S.	Reviewed pursuant to 24-4-103.3, C.R.S., Mandatory Review of Rules.	Vehicle Owners, Law Enforcement Agencies, County Clerk and Recorders, Tolling Authorities	Reviewed/Adopted	Yes
4/14/2018	1 CCR 204-10 Rule 45	Alumni License Plates	Revision	§42-1-204 and 42-3-214, C.R.S.	Reviewed because of policy changes with how the DMV retires license plates where the statutory language is "may retire" required amendments	Alumni Associations, Colorado Correctional Industries, County Clerk and Recorder	Reviewed/Adopted	No
3/2/2018	1 CCR 204-10 Rule 48	CO Dealer License Plates	Revision	§42-1-102(22), 42-1-204, 42-3-116, and 42-3-304, C.R.S.	Reviewed because the rule required amendments to meet new system requirements with the implementation of DRIVES	Dealerships, County Clerk and Recorder	Reviewed/Adopted	No
10/15/2018 (Hearing)	1 CCR 204-16 Recodified as 1 CCR 204-30 Rule 2	Interstate Driver License Compact Rules	Revision	§24-4-104, 24-60-1101 et seq., and 42-1-204, C.R.S.	Reviewed pursuant to 24-4-103.3, C.R.S., Mandatory Review of Rules.	County Clerks, Vehicle Owners, Law Enforcement, DMV Offices	Ongoing	Yes
10/15/2018 (Hearing)	1 CCR 204-26 Recodified as 1 CCR 204-30 Rule 3	Medical Re-Exam/Rehab Process	Revision	§42-2-111, 42-2-112, and 42-2-104, C.R.S.	Reviewed pursuant to 24-4-103.3, C.R.S., Mandatory Review of Rules.	County Clerks, Vehicle Owners, Law Enforcement, DMV Offices, Medical Professionals	Ongoing	Yes
6/30/2018	1 CCR 204-30 Rule 1	Rules for Application for a Colorado Road and Community Safety Act ID 42-2-501 CRS	Revision	§24-4-103, 24-72.1-103, and 42-1-204, C.R.S. Parts 1, 2, 3, and 5, of Article 2 of Title 42, C.R.S.	Reviewed to adjust fees.	Colorado Auto Dealers Association, Colorado Immigrants Rights Coalition, Local Government, ID Task Force, SB251, Colorado Residents	Reviewed/Adopted	No
10/15/2018 (Hearing)	1 CCR 204-30 Rule 1	Rules for Application for a Colorado Road and Community Safety Act ID 42-2-501 CRS	Revision	§24-4-103, 24-72.1-103, 42-1-204, C.R.S. Parts 1, 2, 3, and 5, of Article 2, Title 42, C.R.S.	Reviewed to comply with SB 18-108 and also to add Incorporation by Reference as requested by OLLS.	Colorado Auto Dealers Association, Colorado Immigrants Rights Coalition, Local Government, ID Task Force, SB251, Colorado Residents	Ongoing	No
9/30/2018	1 CCR 204-30 Rule 7	Rules and Regulations for the Commercial Driver's License (CDL) Program	Revision	§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.	Reviewed to comply with the statutory obligation to review the maximum fee that can be charged by CDL third party testing organizations.	CDL Holders, Law Enforcement, DMV Offices, Colorado Residents	Reviewed/Adopted	No
1/14/2018	1 CCR 204-30 Rule 7	Rules and Regulation for the Commercial Drivers License (CDL) Program	Revision	§24-4-103, 42-2-111(1)(b), 42-2-114.5, 42-2-403, 42-2-406(3 thorough 7), and 42-2-407(8), C.R.S.	Reviewed to comply with HB 18-1018.	CDL Holders, Law Enforcement, DMV Offices, Colorado Residents	Reviewed/Adopted	No
5/15/2018	1 CCR 204-30 Rule 8	Rules and Regulations for the Class R Driver Testing and Education Program	Revision	§24-4-103, 104 and 105, 42-1-102(43.5), 42-1-204, 42-1-211, 42-1-222, 42-2-105.5, 42-2-106, 42-2-111, and 42-2-601, 602, 603, and 604, C.R.S.	Reviewed pursuant to 24-4-103.3, C.R.S., Mandatory Review of Rules.	Driving Schools, Law Enforcement, High School Students, Colorado Residents, DMV Offices, County Offices	Reviewed/Adopted	Yes
1/14/2018	1 CCR 204-30 Rule 9	Motorcycle Rules and Regulations for RST Organizations and RST Testers	Revision	§24-4-103, 24-4-104, 42-1-102(43.5), 42-1-102 (55), 42-1-102(58), 42-1-204; 42-2-103, 42-2-106, 42-2-111, and 42-4-1502, C.R.S. (2016)	*Change due to DRIVES project.	Motorcycle License Holders. Law Enforcement, RST Resters, Colorado Residents	Reviewed/Adopted	No

## Motor Vehicle Dealer Board 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Include Actual Hearing or Adoption Date (Month Year)			If only a part of a CCR is repeated, it should be classified as "revised"	If statutory, list C.R.S.		Consider including high-level outreach bullet. Categories of stakeholders, not individual stakeholders.	Adopted/ Not Adopted/ Withdrawn/ Ongoing/ Reviewed	Select one of the following options: YES: If the rule was published in the CY17 Agenda, or NO: If the rule was unpublished or an emergency rule.
09/18/18	1 CCR 205-2 Regulation #44-20-404(1)(a)	Delegation of Rule-making activities	New	\$44-20-401, 44-20-402, 44-20-403, 44-20-404, and 44-20-405, C.R.S.	To delegate authority to the executive secretary with respect to the board's rule-making activities under the State Administrative Procedure Act.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Adopted	Yes
09/18/18	1 CCR 205-2 Regulation #44-20-404(1)(d)(II)	Authorization to issue licensure documents	New	\$44-20-104, 44-20-401, 44-20-402, 44-20-403, 44-20-404, 44-20-405, 44-20-408, 44-20-409, 44-20-410, and 44-20-411, C.R.S.	In recognition of statutory changes in 2017, to set out clearly those persons whom the board authorizes to issue licensure documents for licenses approved by the board.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Adopted	Yes
09/18/18	1 CCR 205-2 Regulation #44-20-404(1)	Clarification of process to determine sanctions for licensee violations	New	\$44-20-104, 44-20-401, 44-20-402, 44-20-403, 44-20-404, 44-20-405, 44-20-408, 44-20-418, 44-20-420, and 44-20-421, C.R.S.	To clarify the board's process to determine the appropriate sanctions to assess against a licensee that the board has determined violated provisions of law and regulation under the board's jurisdiction.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Adopted	Yes
09/18/18	1 CCR 205-2 Regulation #44-20-404(1)(f)(V)	Clarification of process upon presentation of an affidavit of probable cause	New	\$44-20-104, 44-20-401, 44-20-402, 44-20-403, 44-20-404, 44-20-405, 44-20-407, 44-20-408, 44-20-417, 44-20-418, 44-20-419, 44-20-420, and 44-20-421, C.R.S.	To clarify the board's process when the division presents an affidavit of probable cause for disciplinary action to the board concerning a licensee's activities that the division had investigated.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Adopted	Yes
09/18/18	1-CCR 205-1 Regulation #44-20-104(3)(a)	Delegation of Rule-making activities	Revision	\$44-20-101, 44-20-102, 44-20-103, 44-20-104, and 44-20-105, C.R.S.	To delegate authority to the executive secretary with respect to the board's rule-making activities under the State Administrative Procedure Act.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Adopted	Yes
09/18/18	1 CCR 205-1 Regulation #44-20-104(3)(d)(II)	Authorization to issue licensure documents	Revision	\$44-20-101, 44-20-102, 44-20-103, 44-20-104, 44-20-105, 44-20-108, 44-20-109, 44-20-110, and, 44-20-111, C.R.S.	In recognition of statutory changes in 2017, to set out clearly those persons whom the board authorizes to issue licensure documents for licenses approved by the board.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Adopted	Yes
09/18/18	1 CCR 205-1 Regulation #44-20-104(3)(f)(I)	Delegation of Authority to Initiated Investigations based on complaints	Revision	\$44-20-101, 44-20-102, 44-20-103, 44-20-104, 44-20-105, 44-20-108, 44-20-121, 44-20-123, and 44-20-129, C.R.S.	Based upon statutory changes in 2017 as a result of the Sunset review of the agency, this rule is no longer needed.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Adopted	Yes
09/18/18	1 CCR 205-1 Regulation #44-20-104(3)(n)	Considerations in assessment of penalties	Repeal	\$44-20-101, 44-20-102, 44-20-103, 44-20-104, 44-20-105, 44-20-108, 44-20-121, and, 44-20-123, C.R.S.	Based upon the clear language of the relevant statutes, this rule is not needed.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Adopted	Yes
09/18/18	1 CCR 205-1 Regulation #44-20-104(4)	Clarification of process to determine sanctions for licensee violations	Revision	\$44-20-101, 44-20-102, 44-20-103, 44-20-104, 44-20-105, 44-20-108, 44-20-119, 44-20-121, and, 44-20-122, C.R.S.	To clarify the board's process to determine the appropriate sanctions to assess against a licensee that the board has determined violated provisions of law and regulation under the board's jurisdiction.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Adopted	Yes
09/18/18	1 CCR 205-1 Regulation #44-20-104(3)(f)(II)	Clarification of process upon presentation of an affidavit of probable cause	New	\$44-20-101, 44-20-102, 44-20-103, 44-20-104, 44-20-105, 44-20-107, 44-20-108, 44-20-121, and, 44-20-122, C.R.S.	To clarify the board's process when the division presents an affidavit of probable cause for disciplinary action to the board concerning a licensee's activities that the division had investigated.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Adopted	Yes
Hearing October, 2018	1 CCR 205-1 Regulation #44-20-102(20)	Clarification of terms of "new" and "used" motor vehicles and clarification of certain terms of art in the industry	Revision	\$44-20-101, 44-20-102, 44-20-103, 44-20-104, and 44-20-108, C.R.S.	To A) clarify the meaning of the terms, "new motor vehicle," and "used motor vehicle," in two different contexts, B) declare the equivalency of two terms of art in the motor vehicle industry, and C) define the unique industry meaning of another term of art in the motor vehicle industry.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Ongoing	Yes
Hearing October, 2018	1 CCR 205-1 Regulation #44-20-102(28)	Deletion in order to combine contents with another rule	Repeal	\$44-20-101, 44-20-102, 44-20-103, 44-20-104, 44-20-105, and, 44-20-108, C.R.S.	To delete this regulation and place its contents in another regulation with additional Wholesaler features.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Ongoing	Yes
Hearing October, 2018	1 CCR 205-1 Regulation #44-20-108(1)(e)	Wholesaler regulation	Revision	\$44-20-101, 44-20-102, 44-20-103, 44-20-104, 44-20-105, 44-20-108, 44-20-120, 44-20-121, C.R.S.	To set out restrictions, requirements, and definitions to regulate uniformly the activities of persons holding a motor vehicle-related "wholesaler" class of license.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Ongoing	Yes
Hearing October, 2018	1 CCR 205-1 Regulation #44-20-108(1)(h)(I)	Elimination of unnecessary rule	Deletion	\$44-20-101, 44-20-102, 44-20-103, 44-20-104, 44-20-105, and 44-20-108, C.R.S.	To eliminate a regulatory provision that is unnecessary based upon the fundamentals already in the related statute.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Ongoing	Yes
Hearing October, 2018	1 CCR 205-1 Regulation #44-20-109(2)	Temporary license for out-of-state motor vehicle dealers	Revision	\$44-20-101, 44-20-102, 44-20-103, 44-20-104, 44-20-105, 44-20-108, 44-20-109, 44-20-110, 44-20-111, 44-20-112, C.R.S.	To A) define the term, "out-of-state motor vehicle dealer," B) set out the possible Colorado venues and parameters for an out-of-state motor vehicle dealer's operations under a temporary out-of-state motor vehicle dealer's license, and, C) detail both the application process and Board evaluation criteria for a temporary out-of-state motor vehicle dealer's license.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Ongoing	Yes
Hearing October, 2018	1 CCR 205-1 Regulation #44-20-110	License Display requirements	Revision	\$44-20-101, 44-20-102, 44-20-103, 44-20-104, 44-20-105, 44-20-108, 44-20-110, 44-20-120, 44-20-121, and, 44-20-122, C.R.S.	To clarify, with regard to current and active licenses of each class of license, the visibility and access requirements for the display of each relevant license at the licensee's business locations.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Ongoing	Yes



## Motor Vehicle Dealer Board 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are be marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing October, 2018	1 CCR 205-1 Regulation #44-20-120	Dealership site requirements	Revision	§44-20-101, 44-20-102, 44-20-103, 44-20-104, 44-20-105, 44-20-108, 44-20-119, 44-20-120, 44-20-121, and, 44-20-122, C.R.S.	To clarify the initial and ongoing requirements of a motor vehicle dealer and used motor vehicle dealer with regard to A) sanitary facilities at business locations, B) proof of the right of occupancy of the business premises, C) proof of the licensee's possession of the business premises, and, D) a definition of adequate sanitary facilities required at business locations.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Ongoing	Yes
Hearing October, 2018	1 CCR 205-2 Regulation #44-20-402(8)	Clarification of two Powersports terms of art.	New	§44-20-401, 44-20-402, 44-20-403, 44-20-404, 44-20-405, and 44-20-408, C.R.S.	To clarify A) the equivalency of two terms of art in the powersports industry, and B) the unique industry meaning of another term of art in the powersports industry.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Ongoing	Yes
Hearing October, 2018	1 CCR 205-2 Regulation #44-20-408(1) (f)	Powersports Wholesaler Regulation	New	§44-20-401, 44-20-402, 44-20-403, 44-20-404, 44-20-405, 44-20-408, 44-20-410, 44-20-411, 44-20-419, 44-20-420, and, 44-20-421, C.R.S.	To set out restrictions, requirements, and definitions to regulate uniformly the activities of persons holding a powersports-vehicle-related "wholesaler" class of license.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Ongoing	Yes
Hearing October, 2018	1 CCR 205-2 Regulation #44-20-409(2)	Temporary license for out-of-state powersports vehicle dealers	Revision	§44-20-401, 44-20-402, 44-20-403, 44-20-404, 44-20-405, 44-20-408, 44-20-410, 44-20-411, 44-20-412, 44-20-417, 44-20-420, and 44-20-421, C.R.S.	To A) define the term, "out-of-state powersports vehicle dealer," B) set out the possible Colorado venues and parameters for an out-of-state powersports vehicle dealer's operations under a temporary out-of-state powersports vehicle dealer's license, and, C) detail both the application process and Board evaluation criteria for a temporary out-of-state powersports vehicle dealer's license.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Ongoing	Yes
Hearing October, 2018	1 CCR 205-2 Regulation #44-20-410	License Display requirements	New	§44-20-401, 44-20-402, 44-20-403, 44-20-404, 44-20-405, 44-20-408, 44-20-410, 44-20-417, 44-20-419, 44-20-420, and 44-20-421, C.R.S.	To clarify, with regard to current and active licenses of each class of license, the visibility and access requirements for the display of each relevant license at the licensee's business locations.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Ongoing	Yes
Hearing October, 2018	1 CCR 205-2 Regulation #44-20-419(1)	Dealership site requirements	Revision	§44-20-401, 44-20-402, 44-20-403, 44-20-404, 44-20-405, 44-20-408, 44-20-418, 44-20-419, 44-20-420, and 44-20-421, C.R.S.	To clarify the initial and ongoing requirements of a powersports vehicle dealer and used powersports vehicle dealer with regard to A) sanitary facilities at business locations, B) proof of the right of occupancy of the business premises, C) proof of the licensee's possession of the business premises, and, D) a definition of adequate sanitary facilities required at business locations.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Ongoing	Yes

## Colorado Lottery 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
<i>Include Actual Hearing or Adoption Date (Month/Year)</i>			<i>If only a part of a CCR is repeated, it should be classified as "Revised"</i>	<i>If statutory, list C.R.S.</i>		<i>Consider including high-level outreach bullets. Categories of stakeholders, not individual stakeholders.</i>	<i>Adopted/ Not Adopted/ Withdrawn/ Ongoing/ Reviewed</i>	<i>Select one of the following options: YES: If the rule was published in the CY17 Agenda, or NO: If the rule was unpublished or an emergency rule.</i>
9/2018	1 CCR 206-1 Rule 1	General Rules, Regulations, and Definitions	Revised	§44-40-101(5) and (6), 44-40-104(4)(a), 44-40-109(1)(a) and (h), and (2), 44-40-113, and 44-40-114, C.R.S.	<ul style="list-style-type: none"> <li>Statutes have been updated from Title 24 to Title 44 to comply with agency recodification, effective October 1, 2018.</li> <li>Rules layout has been changed to comply with Secretary of State recommended template.</li> <li>Rules have been reorganized to have consistent numbered headers and names.</li> <li>References to Play at the Pump have been removed.</li> <li>Outdated information has been removed.</li> <li>Rules that apply to common Lottery Games were added to section 1.3.</li> <li>Definitions that apply to the majority of Lottery Rules have been added or moved to and will only display in Rule 1.</li> </ul>	<ul style="list-style-type: none"> <li>One (1) representative from PGCC (Problem Gaming Coalition of Colorado)</li> <li>Chain Retailer</li> <li>One (1) Independent Retailer</li> <li>One (1) representative from GOCO (Great Outdoors Colorado)</li> <li>Two (2) Players</li> <li>Two (2) representatives from CPW (Colorado Parks and Wildlife)</li> <li>One (1) representative from CTF (Conservation Trust Fund)</li> </ul>	Adopted	No
9/2018	1 CCR 206-1 Rule 10	In-State Lottery Jackpot Games	Revised	§44-40-101(5) and (6), 44-40-104(4)(a), 44-40-109(1)(a) and (h), and (2), 44-40-113, and 44-40-114, C.R.S.	<ul style="list-style-type: none"> <li>Statutes have been updated from Title 24 to Title 44 to comply with agency recodification, effective October 1, 2018.</li> <li>Rules layout has been changed to comply with Secretary of State recommended template.</li> <li>Rules have been reorganized to have consistent numbered headers and names.</li> <li>References to Play at the Pump have been removed.</li> <li>Outdated information has been removed.</li> <li>Awarding prizes to an entity has been removed per the official recommendation from the Attorney General's Office.</li> <li>Promotional Jackpot Drawings has been added and will begin November 2018.</li> </ul>	<ul style="list-style-type: none"> <li>One (1) representative from PGCC (Problem Gaming Coalition of Colorado)</li> <li>Chain Retailer</li> <li>One (1) Independent Retailer</li> <li>One (1) representative from GOCO (Great Outdoors Colorado)</li> <li>Two (2) Players</li> <li>Two (2) representatives from CPW (Colorado Parks and Wildlife)</li> <li>One (1) representative from CTF (Conservation Trust Fund)</li> </ul>	Adopted	No
9/2018	1 CCR 206-1 Rule 14	Multi-State Lottery Jackpot Games	Revised	§44-40-101(5) and (6), 44-40-104(4)(a), 44-40-109(1)(a) and (h), and (2), 44-40-113, and 44-40-114, C.R.S.	<ul style="list-style-type: none"> <li>Statutes have been updated from Title 24 to Title 44 to comply with agency recodification, effective October 1, 2018.</li> <li>Rules layout has been changed to comply with Secretary of State recommended template.</li> <li>Rules have been reorganized to have consistent numbered headers and names.</li> <li>References to Play at the Pump have been removed.</li> <li>Outdated information has been removed.</li> <li>Awarding prizes to an entity has been removed per the official recommendation from the Attorney General's Office.</li> <li>Promotional Jackpot Drawings has been added and will begin November 2018.</li> </ul>	<ul style="list-style-type: none"> <li>One (1) representative from PGCC (Problem Gaming Coalition of Colorado)</li> <li>Chain Retailer</li> <li>One (1) Independent Retailer</li> <li>One (1) representative from GOCO (Great Outdoors Colorado)</li> <li>Two (2) Players</li> <li>Two (2) representatives from CPW (Colorado Parks and Wildlife)</li> <li>One (1) representative from CTF (Conservation Trust Fund)</li> </ul>	Adopted	No
11/2018	1 CCR 206-1 Rule 1	General Rules, Regulations, and Definitions	Revised	§44-40-101(5) and (6), 44-40-104(4)(a), 44-40-109(1)(a) and (h), and (2), 44-40-113, and 44-40-114, C.R.S.	Update Persons Ineligible to Purchase Tickets (section 1.3.3).	<ul style="list-style-type: none"> <li>One (1) representative from PGCC (Problem Gaming Coalition of Colorado)</li> <li>Chain Retailer</li> <li>One (1) Independent Retailer</li> <li>One (1) representative from GOCO (Great Outdoors Colorado)</li> <li>Two (2) Players</li> <li>Two (2) representatives from CPW (Colorado Parks and Wildlife)</li> <li>One (1) representative from CTF (Conservation Trust Fund)</li> </ul>	Ongoing	No
11/2018	1 CCR 206-1 Rule 5	Instant Scratch Games	Revised	§44-40-109(1-3), 44-40-113, and 44-40-114, C.R.S.	<ul style="list-style-type: none"> <li>Statutes have been updated from Title 24 to Title 44 to comply with agency recodification, effective October 1, 2018.</li> <li>Rules layout has been changed to comply with Secretary of State recommended template.</li> <li>Rules have been reorganized to have consistent numbered headers and names.</li> <li>Outdated information has been removed.</li> <li>Awarding prizes to an entity has been removed per the official recommendation from the Attorney General's Office.</li> <li>Removed sections that now reside in Rule 1 (Purchasers Obligation, Persons Ineligible to Purchase Tickets, Lost or Stolen Tickets, etc.)</li> </ul>	<ul style="list-style-type: none"> <li>One (1) representative from PGCC (Problem Gaming Coalition of Colorado)</li> <li>Chain Retailer</li> <li>One (1) Independent Retailer</li> <li>One (1) representative from GOCO (Great Outdoors Colorado)</li> <li>Two (2) Players</li> <li>Two (2) representatives from CPW (Colorado Parks and Wildlife)</li> <li>One (1) representative from CTF (Conservation Trust Fund)</li> </ul>	Ongoing	No

## Division of Gaming - Rules Promulgated by Gaming Commission 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
<i>Include Actual Hearing or Adoption Date (Month Year)</i>			<i>If only a part of a CCR is repeated, it should be classified as "revised"</i>	<i>If statutory, list C.R.S.</i>		<i>Consider including high-level outreach bullets.</i> <i>Categories of stakeholders, not individual stakeholders.</i>	<i>Adopted/ Not Adopted/ Withdrawn/ Ongoing/ Reviewed</i>	<i>Select one of the following options: YES: If the rule was published in the CY17 Agenda, or NO: If the rule was unplanned or an emergency rule.</i>
3/15/18	1 CCR 207-1 Rule 21	Rules for Blackjack-Poker Combination Games	Revision	§44-30-201, 44-30-302, 44-30-816, and 44-30-818, C.R.S.	Amendments to Rule 21 in order to correct mor errors, update the ruel for Regulation 30-2113 Buffalo Blackjack Bonus 2, and to promulgae rules for a new game, Buffalo Blackjack Bonus 3.	Limited Gaming Licensees, Div. of Gaming Employees, Gaming Patrons	Adopted	No
4/19/18	1 CCR 207-1 Rule 14	Gaming Tax	Revision	§44-30-201, 44-30-203, 44-30-302, 44-30-602, and 44-30-604, C.R.S. (1991).	Annual Tax Hearings. Amendments proposed to promulgate new rules for the taxation of casino free play.	Limited Gaming Licensees, Div. of Gaming, Financial Analysts, Community Colleges, Gilpin County, Teller County, City of Cripple Creek, City of Central, City of Black Hawk	Adopted	Yes
5/17/18	1 CCR 207-1 Rule 3	Applications, Investigations, and Licensure	Revision	§44-30-102, 44-30-103, 44-30-201, 44-30-203, 44-30-302, C.R.S.  Part 5 of Article 30 of Title 44, C.R.S.	Annual Tax Hearings. Amendments proposed to promulgate new rules for the taxation of casino free play.	Limited Gaming Licensees, Div. of Gaming Employees	Adopted	Yes
6/21/18	1 CCR 207-1 Rule 10	Rules for Poker	Revision	§44-30-201, 44-30-203, 44-30-302, 44-30-816, and 44-30-818, C.R.S.	Amendments included updates to various games as requested by the games owners, corrections, and the promulgation of rules for a new game, "Poker Burnout".	Limited Gaming Licensees, Div. of Gaming Employees, Gaming Patrons	Adopted	No
6/21/18	1 CCR 207-1 Rule 21	Rules for Blackjack-Poker Combination Games	Revision	§44-30-201, 44-30-302, 44-30-816, and 44-30-818, C.R.S.	Amendments to Regulation 30-2107 The Play - 21+3, as requested by the game owner.	Limited Gaming Licensees, Div. of Gaming Employees, Gaming Patrons	Adopted	No
6/21/18	1 CCR 207-1 Rule 22	Rules for Roulette	Revision	§44-30-201, 44-30-203, 44-30-302, and 44-30-818, C.R.S.	Amendment to Rule 22 to promulgate rules for a new game of roulette, Roulette with Spinner Winner.	Limited Gaming Licensees, Div. of Gaming Employees, Gaming Patrons	Adopted	No
7/1/18	1 CCR 207-1 Rule 7	Conflict of Interest	N/A	§44-30-201, 44-30-203, 44-30-302, and 44-30-401, C.R.S.	No changes recommended.	Limited Gaming Licensees, Div. of Gaming Employees, Gaming Patrons	Reviewed	Yes
7/1/18	1 CCR 207-1 Rule 9	Min. Procedures for Drop, Count, and Distribution of Chips and Coins for BJ, Craps, Roulette	N/A	§44-30-201, 44-30-203, and 44-30-302, C.R.S.	No changes recommended.	Limited Gaming Licensees, Div. of Gaming Employees, Gaming Patrons	Reviewed	Yes
7/1/18	1 CCR 207-1 Rule 11	Min. Procedures for Drop, Count, and Distribution of Chips and Coins for Poker	N/A	§44-30-201, 44-30-203, and 44-30-302, C.R.S.	No changes recommended.	Limited Gaming Licensees, Div. of Gaming Employees, Gaming Patrons	Reviewed	Yes
7/1/18	1 CCR 207-1 Rule 16	Accounting Regulations	N/A	§44-30-102, 44-30-201, 44-30-203, 44-30-302, 44-30-602, and 44-30-806, C.R.S.	No changes recommended.	Limited Gaming Licensees, Div. of Gaming Employees, Gaming Patrons	Reviewed	Yes
7/1/18	1 CCR 207-1 Rule 17	Min. Procedures for Drop and Count for Slot Machines	N/A	§44-30-201, 44-30-203, and 44-30-302, C.R.S.	No changes recommended.	Limited Gaming Licensees, Div. of Gaming Employees, Gaming Patrons	Reviewed	Yes
8/29/18	1 CCR 207-1 Rule 10	Rules for Poker	Revision	§44-30-201, 44-30-203, 44-30-302, 44-30-816, and 44-30-818, C.R.S.	Amendment to Rule 10 to promulgate rules for a new game of poker, 3 Card Super Shot Poker.	Limited Gaming Licensees, Div. of Gaming Employees, Gaming Patrons	Adopted	No
10/18/18	1 CCR 207-1 Rule 1	General Rules and Regulations	Revision	§44-30-102, 44-30-103, 44-30-104, 44-30-201, 44-30-203, and 44-30-302, C.R.S.	Amendments to Regulation 30-106 Definitions in order to add the definition of lingering.	Limited Gaming Licensees, Div. of Gaming Employees, Gaming Patrons	Ongoing	No
10/18/18	1 CCR 207-1 Rule 6	Declaratory Orders	Revision	§44-30-201, 44-30-203, 44-30-302, and 24-4-105(11), C.R.S.	Amendments in order to make minor corrections and to clarify the language regarding the receipt of a petition by the Gaming Commission.	Limited Gaming Licensees, Div. of Gaming Employees, Gaming Patrons, Gaming Commission	Ongoing	Yes
12/20/18	1 CCR 207-1 Rule 12	Gaming Devices and Equipment	Revision	§44-30-201, 44-30-203, 44-30-302, and 44-30-806, C.R.S.	Amendments to Regulation 30-1244 in order to allow new gaming technologies to be approved in Colorado.	Limited Gaming Licensees, Div. of Gaming Employees, Gaming Patrons	Ongoing	No

## Colorado Racing Commission 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
<i>Include Actual Hearing or Adoption Date (Month Year)</i>			<i>If only a part of a CCR is repeated, it should be classified as "revised"</i>	<i>If statutory, list C.R.S.</i>		<i>Consider including high-level outreach bullet:</i> <i>Categories of stakeholders, not individual stakeholders.</i>	<i>Adopted/ Not Adopted/ Withdrawn/ Ongoing/ Reviewed</i>	<i>Select one of the following options:</i> <i>YES: If the rule was published in the CY17 Agenda, or</i> <i>NO: If the rule was unpublished or an emergency rule.</i>
12/2017	1 CCR 208-1 Chapter 8	Chapter 8 -- Claiming Race (34 Total Rules)	N/A	Broad rulemaking authority is granted in §44-32-501(2)(a), C.R.S., to the Colorado Racing Commission.	To comply with Executive Order 2, ordering the review of 100% of the rule book every 5 years. The Division has interpreted this requirement as ~20% every year.	Horsemen, Division Employees, Association Employees	Reviewed	Yes
12/2017	1 CCR 208-1 Chapter 9	Chapter 9 -- Special Rules of the State of Colorado (29 Total Rules)	N/A	Broad rulemaking authority is granted in §44-32-501(2)(a), C.R.S., to the Colorado Racing Commission.	To comply with Executive Order 2, ordering the review of 100% of the rule book every 5 years. The Division has interpreted this requirement as ~20% every year.	Horsemen, Division Employees, Association Employees	Reviewed	Yes
12/2017	1 CCR 208-1 Chapter 10	Chapter 10 -- Account Wagering (24 Total Rules)	N/A	Broad rulemaking authority is granted in §44-32-501(2)(a), C.R.S., to the Colorado Racing Commission.	To comply with Executive Order 2, ordering the review of 100% of the rule book every 5 years. The Division has interpreted this requirement as ~20% every year.	Horsemen, Division Employees, Association Employees	Reviewed	Yes
N/A	1 CCR 208-1 3.200	Incomplete Application as Grounds for Discipline	New	§12-60-503(1)(a), C.R.S.	To enact a rule establishing the standards for an incomplete application and setting the penalty guidelines for failing to have an incomplete application including fines and automatic denial.	All Licensees, Division Employees	Withdrawn	Yes
March 13, 2018	1 CCR 208-1 3.402	Safety Gear	Revision	§12-60-201(1), 12-60-501, 12-60-503(1)(a), C.R. S.	To incorporate current international safety equipment standards into the Colorado rule. Also to reflect the recent location change of the DRE office.	All Licensees, Division Employees	Adopted	Yes
N/A	1 CCR 208-1 3.437	Human Drug Testing	Revision	§12-60-201(1), 12-60-501, 12-60-503, 12-60-503(1)(a), C.R.S.	To revise the rule to address the manner in which certain substances are addressed.	All Licensees affected by the Drug Testing policy.	Withdrawn	Yes
N/A	1 CCR 208-1 3.501	Lessor / Lessee Required to be Licensed	New	§12-60-201(1), 12-60-501, 12-60-503, 12-60-506(1), C.R.S.	To enact a rule requiring that the lessor and lessee of a horse must be registered as owners.	Horsemen	Withdrawn	Yes
N/A	1 CCR 208-1 3.514	Trainer Responsibility: Declaration of Sex of Horse	Revision	§12-60-201(1), 12-60-501, 12-60-503(1)(a), C.R. S.	To clarify that a trainer is also responsible for declaring whether a horse's sex has changed since last entry.	Trainers, Betting Public	Withdrawn	Yes
N/A	1 CCR 208-1 3.602	Jockey Competence	Revision	§12-60-201(1), 12-60-501, 12-60-503(1)(a), C.R. S.	To include in the rule current Stewards' practice of requiring that an apprentice jockey ride in five races as an additional requirement of "competence" prior to any license being formally approved and issued.	Jockeys, Division Staff, Betting Public	Withdrawn	Yes
N/A	1 CCR 208-1 3.650	Jockey Agents	Revision	§12-60-201(1), 12-60-501, 12-60-503(1)(a), C.R. S.	To clearly enumerate the number of jockeys that any one agent can represent and remove the Board's ability to grant approval to exceed the rule's prescribed number.	Jockeys, Jockey Agents, Board of Stewards	Withdrawn	Yes
N/A	1 CCR 208-1 4.100	Board of Stewards	Revision	§12-60-201(1), 12-60-501, 12-60-503(1)(a), C.R. S.	To include the provision that all Stewards must be accredited by the Racing Official Accreditation Program (ROAP) as a condition of being a Steward.	All Racing Participants, Betting Public, Division Employees	Withdrawn	Yes
March 13, 2018	1 CCR 208-1 5.244	Horse Required on Grounds	Revision	§12-60-201(1), 12-60-501, and 12-60-503(1)(a), C.R.S.	To revise rule to require that horses are on racetrack grounds 48 hours prior to entry, instead of 48 hours prior to post.	Owners, Trainers, Association	Adopted	Yes
N/A	1 CCR 208-1 5.402	Minimum Time for Releasing Horse from Test Barn	Revision	§12-60-201(1), 12-60-501, and 12-60-503(1)(a), C.R.S.	To revise the rule to clearly establish minimum time for holding a horse in the test barn to wait for a urine sample.	Owners, Trainers, Association, Veterinarians, Veterinarians Staff	Withdrawn	Yes
March 13, 2018	1 CCR 208-1 5.411	Penalty Guidelines	Revision	§12-60-201(1), 12-60-501, and 12-60-503(1)(a), C.R.S.	To revise the rules to reflect changes made in most current versions of ARCI Model Rules	Owners, Trainers, Betting Public, Division Employees	Adopted	Yes
March 13, 2018	1 CCR 208-1 6.401	Disqualifications	Revision	§12-60-201(1), 12-60-501, and 12-60-503(1)(a), C.R.S.	To remove the Race Review Committee process and make all decisions regarding the disqualification, placement or derogatory comment of an animal during the running of a race a final agency action.	Owners. Trainers, Board of Stewards, Commission	Adopted	Yes
N/A	1 CCR 208-1 7.124	Works	Revision	§12-60-201(1), 12-60-501, and 12-60-503(1)(a), C.R.S.	To modify workout requirements for all starters to require that all workouts required for entry are no more than sixty (60) days old.	Owners, Trainers, Board of Stewards, Betting Public	Withdrawn	Yes
N/A	1 CCR 208-1 7.216	Naming of Jockeys	Revision	§12-60-201(1), 12-60-501, and 12-60-503(1)(a), C.R.S.	To modify the rule to require that a jockey be named at the time of the draw, instead of up to an hour later and to alleviate responsibility of the Board in finding riders for Trainers.	Owners, Trainers, Jockeys, Board of Stewards	Withdrawn	Yes
March 13, 2018	1 CCR 208-1 7.724	Film Review	New	§12-60-201(1), 12-60-501, and 12-60-503(1)(a), C.R.S.	To include a rule which outlines the process for film reviews.	Division Employees, Jockeys	Adopted	Yes
N/A	1 CCR 208-1 9.211	Colorado Bred	Revision	§12-60-201(1), 12-60-501, and 12-60-503(1)(a), C.R.S.	To revise the rule to conform with current track practice of allowing horses to be entered without the stamp, so long as the stamp is received by the time the horse runs.	Trainers, Betting Public	Withdrawn	Yes
N/A	1 CCR 208-1 9.212	Colorado Bred Weight Allowance	Revision	§12-60-201(1), 12-60-501, and 12-60-503(1)(a), C.R.S.	To establish that in order to receive any weight allowance by being a Colorado Bred horse, the Colorado Bred stamp must be present at time of entry to ensure full disclosure of weight to the betting public.	Trainers, Betting Public	Withdrawn	Yes
March 13, 2018	1 CCR 208-1 12.21	Pools	Revision	§12-60-201(1), 12-60-501, and 12-60-503(1)(a), C.R.S.	To make permanent Commission Order 17-01 lowering the required number of starts to retain certain types of wagers.	Betting Public, Association	Adopted	Yes

## Executive Director of the Department of Revenue 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are be marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
<small>Include Actual Hearing or Adoption Date (Month/Year)</small>			<small>If only a part of a CCR is repeated, it should be classified as "revised"</small>	<small>If statutory, list C.R.S.</small>		<small>Consider including high-level outreach bullets. Categories of stakeholders, not individual stakeholders.</small>	<small>Adopted/ Not Adopted/ Withdrawn/ Ongoing/ Reviewed</small>	<small>Select one of the following options: YES: If the rule was published in the CY17 Agenda, or NO: If the rule was unplanned or an emergency rule.</small>
5/3/2018	1 CCR 210-1	Gambling Payment Intercept	Revised	§44-33-101, et seq, C.R.S.	Correction filing to update Rule as a result of the re-codification of Title 12. This Rule was moved to Title 44.	Gaming licensees, Gaming patrons, Div. of Gaming employees	Adopted	No
7/17/2018	1 CCR 210-4	Enforcement of the Prohibited Use of Electronic Benefits Transfer Cards at Certain Locations	Revised	§26-2-104, et seq., 44-30-103(18), 44-32-102 (11), 44-32-102(24), 44-3-202(b), 44-11-104(6), and 44-12-103(7), C.R.S.	Correction filing to update Rule as a result of the re-codification of Title 12. This Rule was moved to Title 44.	Department of Revenue, Dept. of Health and Human Services, EBT Card holders, Gaming licensees, Liquor licensees, Marijuana licensees, Racing licensees	Adopted	No
Effective 10/1/2018	1 CCR 210-2	Motor Vehicle and Powersports Vehicle Manufactureres, Distributors, and Manufacturer's Representatives, and also Motor Vehicle Bueyers Agents	Revised	§44-20-105(2)(c-e) and (3)(a)(II), 44-20-117, 44-20-118(5), 44-20-121(1)(b), 44-20-405(1), and 44-20-417(5), C.R.S.	Correction filing to update Rule as a result of the re-codification of Title 12. This Rule was moved to Title 44.	Franchise (New) and Used Motor Vehicle and Powersports Dealers.	Adopted	No

## Hearings Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are be marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
<small>Include Actual Hearing or Adoption Date (Month/Year)</small>			<small>If only a part of a CCR is repealed, it should be classified as "revised".</small>	<small>If statutory, list C.R.S.</small>		<small>Consider including high-level outreach bullets. Categories of stakeholders, not individual stakeholders.</small>	<small>Adopted/ Not Adopted/ Withdrawn/ Ongoing/ Reviewed</small>	<small>Select one of the following options: YES: If the rule was published in the CY17 Agenda, or NO: If the rule was unplanned or an emergency rule.</small>
N/A	1CCR 211-2	Rules for Hearings Related to Drivers Licenses or State Issued Identification Cards	Revision	§42-2-125, 126, 127, 127.7, 127.6, and 127.9, C.R.S.  Various parts of Title 42, C.R.S.	Reviewed pursuant to §24-4-103.3, C.R.S., Mandatory Review of Rules. Clean up and clarify rules, streamline processes, and ensure statutory compliance.	DMV, Police agencies, attorney groups (defense attorneys /district attorneys), "the public", probation officers, advocacy groups	Ongoing	No
N/A	1 CCR 211-3	Rules for the Length of Restraint and Issuance of Probationary Driver's Licenses	Revision	§42-2-125, 126, 127, 127.7, 127.6, and 127.9, C.R.S.  Various parts of Title 42, C.R.S.	Reviewed pursuant to §24-4-103.3, C.R.S., Mandatory Review of Rules. Clean up and clarify rules, streamline processes, and ensure statutory compliance.	DMV, Police agencies, attorney groups (defense attorneys /district attorneys), "the public", probation officers, advocacy groups	Ongoing	No

## Marijuana Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
<i>Include Actual Hearing or Adoption Date (Month Year)</i>			<i>If only a part of a CCR is repeated, it should be classified as "revised"</i>	<i>If statutory, list C.R.S.</i>		<i>Consider including high-level outreach bullet.</i> <i>Categories of stakeholders, not individual stakeholders.</i>	<i>Adopted/ Not Adopted/ Withdrawn/ Ongoing/ Reviewed</i>	<i>Select one of the following options: YES: If the rule was published in the CY17 Agenda, or NO: If the rule was unpublished or an emergency rule.</i>
Hearing 10/16/2018	1 CCR 212-1 M 103	Definitions	Revised	§44-11-104 and 44-11-202, C.R.S.	To clarify existing definitions, establish definitions as part of implementation of HB17-1034, SB17-192, SB17-187 and HB17-1367, and establish definitions related to proposed rules for alternative use products, pursuant to the State Licensing Authority's rulemaking authority.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	Partially, as related to legislation implementation
Hearing 10/16/2018	1 CCR 212-1 M 201	Application Process	Revised	§44-11-104, 44-11-202, 44-11-301, 44-11-304, 44-11-305, 44-11-307, 44-11-310, 44-11-311, 44-11-313, 44-11-401, and 24-76.5-103, C.R.S.	To establish that only materially complete applications for licenses or registrations, accompanied by all required fees, will be accepted and processed by the Division. The purpose of this rule is also to clarify that when an initial application is materially complete, but the Division determines further information is required before the application can be fully processed, the Applicant must provide the additional requested information within the time frame provided by the Division. Otherwise, the Division cannot act on the application in a timely manner, and the application may be denied.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 203	Process for Renewing a License: Medical Marijuana Businesses	Revised	§44-11-104, 44-11-202, 44-11-306, 44-11-310, and 44-11-311, C.R.S.	To establish how licenses can be renewed.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 204	Ownership Interests of a License: Medical Marijuana Businesses	Revised	§44-11-104, 44-11-202, 44-11-307, 44-11-310, 44-11-313, 44-11-601, and 44-11-901, C.R.S.	To provide clarity regarding the nature of a Direct Beneficial Interest Owner and an Indirect Beneficial Interest Owner, and to clarify what factors the State Licensing Authority generally considers regarding the same. The Division will review all relevant information to determine ownership of a Medical Marijuana Business.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 204.5	Disclosure, Approval and Review of Business Interests	Revised	§44-11-104, 44-11-202, 44-11-304, 44-11-306, 44-11-307, 44-11-309, 44-11-310, 44-11-311, and 44-11-313, C.R.S.	To clarify the application, review and approval process for various types of Business Interests. The Division will review all relevant information to determine ownership of, interests in, and control of a Medical Marijuana Business.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 207	Schedule of Application Fees: Medical Marijuana Businesses	Revised	§44-11-104, 44-11-202, 44-11-310, 44-11-401, 44-11-501, and 44-11-502, C.R.S.	To clarify the schedules of application fees for Medical Marijuana Business Applicants.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	Yes
Hearing 10/16/2018	1 CCR 212-1 M 208	Schedule of Business License and Registration Fees: Medical Marijuana Businesses	Revised	§44-11-104, 44-11-202, 44-11-302, 44-11-310, 44-11-401, 44-11-501, and 44-11-502, C.R.S.	To establish basic requirements for all Division applications and help the regulated community understand procedural licensing and registration requirements.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	Yes
Hearing 10/16/2018	1 CCR 212-1 M 209	Schedule of Business License and Registration Renewal Fees: Medical Marijuana Businesses	Revised	§44-11-104, 44-11-202, 44-11-310, 44-11-401, 44-11-501, and 44-11-502, C.R.S.	To establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No

## Marijuana Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing 10/16/2018	1 CCR 212-1 M 210	Schedule of Other Application Fees: All Licensees	Revised	§44-11-104, 44-11-202, 44-11-310, 44-11-401, 44-11-501, 44-11-502, 44-11-1101, and 44-11-1102, C.R.S.	To establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	Yes
Hearing 10/16/2018	1 CCR 212-1 M 231	Qualifications for Licensure and Residency	Revised	§44-11-104, 44-11-201, 44-11-202, 44-11-305, 44-11-306, 44-11-307, 44-11-310, 44-11-401, 24-18-105, and 24-76.5-101 et seq., C.R.S.	To clarify the qualifications for licensure, including, but not limited to, the requirement for a fingerprint-based criminal history record check for all Direct Beneficial Interest Owners, contractors, employees, and other support staff of licensed entities.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 231.1	Finding of Suitability, Residency and Reporting Requirements for Direct Beneficial Interest Owners	Revised	§44-11-104, 44-11-201, 44-11-202, 44-11-306, 44-11-307, 44-11-310, 44-11-313, 44-11-401, 24-18-105, and 24-76.5-101 et seq., C.R.S.	To clarify the qualifications for Direct Beneficial Interest Owners.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 250	Licensee Required to Keep Mailing Address Current with the Division: All Licensees	Revised	§44-11-202, 44-11-304, and 44-11-310, C.R.S.	To clarify that a Licensee must keep its mailing address current with the Division.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 251	Application Denial and Voluntary Withdrawal: All Licensees	Revised	§44-11-202, 44-11-305, 24-4-104, and 24-4-105, C.R.S.	To establish what factors the State Licensing Authority will consider when denying an application for licensure.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 252	Length of License: All Licensees Except Retail Marijuana Transporters and Occupational Licenses	Revised	§44-11-202 and 44-11-310, C.R.S.	To clarify the length of licenses for businesses and individuals.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 253	Temporary Appointee Registrations for Court Appointees	New	§44-11-202 and 44-11-401, C.R.S.	To establish procedures and requirements for any Person appointed by a court as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person acting in accordance with section 44-11-401(1.5), C.R.S., and authorized by court order to take possession of, operate, manage, or control a Medical Marijuana Business.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 304.1	Medical Marijuana Business and Retail Marijuana Establishment - Shared Licensed Premises and Operational Separation	Revised	§44-11-104, 44-11-202, 44-11-401, 44-11-404, 44-11-405, and 44-11-406, C.R.S.	To establish guidelines for the manner in which a Medical Marijuana Business may share its existing Licensed Premises with a Licensed Retail Marijuana Establishment, and to ensure the proper separation of a Medical Marijuana Business operation from a Retail Marijuana Establishment operation.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 305	Security Alarm Systems and Lock Standards	Revised	§44-11-202, C.R.S.	To ensure adequate control of the Licensed Premises and the Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product contained therein. This rule also establishes the minimum guidelines for security requirements for alarm systems, and commercial locking mechanisms for maintaining adequate security.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No



## Marijuana Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing 10/16/2018	1 CCR 212-1 M 307	Waste Disposal	Revised	§44-11-202, C.R.S.	To establish sanitary requirements for Medical Marijuana Businesses.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 307.5	Transfers of Fibrous Waste	New	§44-11-202, C.R.S.	To establish conditions under which a Licensee is authorized to Transfer Fibrous Waste to a Person for the purpose of producing only Industrial Fiber Products.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 309	Medical Marijuana Business: Inventory Tracking System	Revised	§44-11-104, 44-11-202, and 44-11-403, C.R.S.	To establish a system that will allow the State Licensing Authority and the industry to jointly track Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product from either seed or immature plant stage until the Medical Marijuana, Medical Marijuana Concentrate, or Medical Marijuana-Infused Product is sold to the patient or destroyed.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 401	Medical Marijuana Center: License Privileges	Revised	§44-11-202, 44-11-310, 44-11-402, and 44-11-406, C.R.S.	To establish that it is unlawful for a Medical Marijuana Center Licensee to exercise any privileges other than those granted by the State Licensing Authority, and to clarify the license privileges.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 402	Registration of a Primary Medical Marijuana Center	Revised	§44-11-202, 44-11-310, 44-11-402, and 44-11-403, C.R.S.	To establish that a Medical Marijuana Center can only grow Medical Marijuana in its Optional Premises Cultivation Operation for a patient that has designated that Medical Marijuana Center as being his or her primary center. The rule also helps to ensure that Medical Marijuana plants designated to a particular patient are only being grown at one Medical Marijuana Center.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 403	Medical Marijuana Sales: General Limitations or Prohibited Acts	Revised	§44-11-103, 44-11-202, 44-11-310, 44-11-401, 44-11-402, and 44-11-406, C.R.S.	To clarify those acts that are prohibited, or limited in some fashion, by a licensed Medical Marijuana Center. This rule also restricts the amount of its inventory a Medical Marijuana Center may sell to other Medical Marijuana Businesses to 530 percent for the period July 1, 2018 through June 30, 2019. On July 1, 2019, a Medical Marijuana Center is no longer required to obtain 50 percent of its on-hand inventory from its commonly owned and vertically aligned Optional Premises Cultivation Operation.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 405	Acceptable Forms of Identification for Medical Marijuana Sales	Revised	§44-11-202 and 44-11-402, C.R.S.	The Medical Code requires Medical Marijuana Center employees to verify that the purchaser has a valid registration card issued pursuant to section 25-1.5-106, C.R.S., and a valid picture identification card that matches the name on the registration card. Accordingly, this rule was adopted to explain exactly what types of picture identification cards can be accepted. Not only will this rule alleviate any confusion on the part of Medical Marijuana Center employees, but it will help reduce the amount of fraudulent transactions, thereby helping to maintain the integrity of Colorado's Medical Marijuana Businesses.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 407	Health and Safety Regulations: Medical Marijuana Center	Revised	§44-11-202, C.R.S.	To establish minimum health and safety regulations for Medical Marijuana Centers. It sets forth general standards and basic sanitary requirements for Medical Marijuana Centers. It covers the physical premises where the products are made as well as the individuals handling the products. This rule also authorizes the State Licensing Authority to require an independent consultant conduct a health and sanitary audit of a Medical Marijuana Center. This rule explains when an independent health and sanitary audit may be deemed necessary and sets forth possible consequences of a Medical Marijuana Business's refusal to cooperate or pay for the audit. The State Licensing Authority modeled this rule after those adopted by the Colorado Department of Public Health and Environment. The State Licensing Authority intends this rule to help maintain the integrity of Colorado's Medical Marijuana Centers.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No

## Marijuana Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing 10/16/2018	1 CCR 212-1 M 408	Medical Marijuana Center: Responsible Vendor Program	Revised	§44-11-202, 44-11-1101, and 44-11-1102, C.R.S.	To establish minimum standards for responsible vendor programs that provide training to personnel at Medical Marijuana Centers seeking designation as a "responsible vendor." It sets forth general standards and basic requirements for responsible vendor programs. This rule also establishes the timeframe for new staff to complete a responsible vendor program and the requirements for recertification. The State Licensing Authority intends this rule to help maintain the integrity of Colorado's Medical Marijuana Centers.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 501	Optional Premises Cultivation Operation: License Privileges	Revised	§44-11-202, 44-11-310, 44-11-401, 44-11-402, 44-11-403, 44-11-404, and 44-11-406, C.R.S.	To establish that it is unlawful for an Optional Premises Cultivation Operation to exercise any privileges other than those granted by the State Licensing Authority, and to clarify the license privileges.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 502	Optional Premises Cultivation Operation: General Limitations or Prohibited Acts	Revised	§44-11-103, 44-11-201, 44-11-202, 44-11-310, 44-11-402, 44-11-403, and 44-11-406, C.R.S.	To clarify what activity is or is not allowed at an Optional Premises Cultivation Operation.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 503	Optional Premises Cultivation Operation: Inventory Tracking System	Revised	§44-11-202 and 44-11-403, C.R.S.	To eliminate diversion of Medical Marijuana.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 504	Optional Premises Cultivation Operation: Health and Safety Regulations	Revised	§44-11-202, C.R.S.	To establish minimum health and safety regulations for Optional Premises Cultivation Operations. The rule prohibits an Optional Premises Cultivation Operation from treating or otherwise adulterating Medical Marijuana with any chemical or other compound whatsoever to alter its color, appearance, weight or smell. This rule also authorizes the State Licensing Authority to require an independent consultant conduct an independent health and sanitary audit of an Optional Premises Cultivation Operation. This rule explains when an independent health and sanitary audit may be deemed necessary and sets forth possible consequences of a Medical Marijuana Business's refusal to cooperate or pay for the audit. The State Licensing Authority intends this rule to help maintain the integrity of Colorado's Medical Marijuana Businesses.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 506	Optional Premises Cultivation Operation: Medical Marijuana Concentrate Production	Revised	§44-11-202, C.R.S.	To establish the categories of Medical Marijuana Concentrate that may be produced at an Optional Premises Cultivation Operation and standards for the production of those concentrate.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 507	Optional Premises Cultivation Operation: Production Management	New	§44-11-202, 44-11-402, 44-11-403, 44-11-404, and 44-11-501, C.R.S.	To establish a means by which to manage the overall production of Medical Marijuana. The intent of this rule is to encourage responsible production to meet demand for Medical Marijuana, while also avoiding overproduction or underproduction. The establishment of production management is necessary to ensure there is not significant under or over production, either of which will increase incentives to engage in diversion and facilitate the sale of illegal marijuana.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 508	Sampling Unit Protocols	New	§44-11-202 and 44-11-403, C.R.S.	To establish the circumstances under which an Optional Premises Cultivation may provide Sampling Units to a designated Sampling Manager for quality control or product development purposes. In order to maintain the integrity of Colorado's regulated Medical Marijuana Businesses, this rule establishes limits on the amount of Sampling Units a Sampling Manager may receive in a calendar month and imposes inventory tracking, reporting and recordkeeping requirements on an Optional Premises Cultivation that Transfer Sampling Units.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No

## Marijuana Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing 10/16/2018	1 CCR 212-1 M 601	Medical Marijuana-Infused Products Manufacturer: License Privileges	Revised	§44-11-202, 44-11-404, and 44-11-406, C.R.S.	To establish that it is unlawful for a Medical Marijuana-Infused Products Manufacturer to exercise any privileges other than those granted by the State Licensing Authority and to clarify the license privileges.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 602	Medical Marijuana-Infused Products Manufacturer: General Limitations or Prohibited Acts	Revised	§44-11-202, 44-11-404, and 44-11-406, C.R.S.	The Medical Code sets forth minimum requirements for written agreements between Medical Marijuana-Infused Products Manufacturers and Medical Marijuana Centers. Specifically, the written agreements must set forth the total amount of Medical Marijuana obtained from a Medical Marijuana Center Licensee to be used in the manufacturing process, and the total amount of Medical Marijuana-Infused Product to be manufactured from the Medical Marijuana obtained from the Medical Marijuana Center. This rule clarifies that the Division must approve such written agreements to ensure they meet those requirements.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 603	Medical Marijuana-Infused Products Manufacturer: Inventory Tracking System	Revised	§44-11-202, 44-11-404, and 44-11-406, C.R.S.	To require all Medical Marijuana-Infused Products Manufacturers to track all inventory from the point it is received, through any manufacturing processes, to the point of sale or transfer to another Medical Marijuana Business.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 606	Sampling Unit Protocols	New	§44-11-202 and 44-11-404, C.R.S.	To establish the circumstances under which a Medical Marijuana-Infused Products Manufacturer may provide Sampling Units to a designated Sampling Manager for quality control or product development purposes. In order to maintain the integrity of Colorado's regulated Medical Marijuana Businesses, this rule establishes limits on the amount of Sampling Units a Sampling Manager may receive in a calendar month and imposes inventory tracking, reporting, and recordkeeping requirements on a Medical Marijuana-Infused Products Manufacturer that Transfer Sampling Units.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 607	Medical Marijuana-Infused Products Manufacturer: Audited Product and Alternative Use Product	New	§44-11-202, 44-11-404, and 44-11-901, C.R.S.	To define requirements for manufacture of Audited Product for administration by: (1) metered dose nasal spray, (2) pressurized metered dose inhaler, (3) vaginal administration, or (4) rectal administration which may raise public health concerns. This rule defines audit, insurance, minimum product requirements, minimum production process requirements, and pre-production testing requirements for Medical Marijuana-Infused Products Manufacturers that manufacture Audited Products. The purpose of this rule further recognizes that Alternative Use Product not within an intended use identified in Rule M 1003-1 may raise public health concerns that outweigh its manufacturer or Transfer entirely or that require additional safeguards to protect public health and safety prior to manufacturer or Transfer. This rule identifies general requirements for Medical Marijuana-Infused Products Manufacturer to seek an Alternative Use Designation from the State Licensing Authority to manufacture any type of Medical Marijuana-Infused Product that is not within an intended use identified in Rule M 1003-1.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 703	Medical Marijuana Testing Facilities: Certification Requirements	Revised	§44-11-202 and 44-11-405, C.R.S.	To establish a frame work for certification for Medical Marijuana Testing Facilities.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 712	Medical Marijuana Testing Facilities: Sampling and Testing Program	Revised	§44-11-202 and 44-11-405, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (VII).	To establish the portion of the Division's mandatory testing and random sampling program that is applicable to Medical Marijuana Testing Facilities. The allowable plus or minus 15% potency variance has been included in the rule pursuant to the mandate of Senate Bill 15-260. Section 1 of the bill required the State Licensing Authority to establish an acceptable potency variance. The acceptable potency variance has been set at plus or minus 15% to comport with the potency variance mandated by the Medical Code.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No

## Marijuana Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing 10/16/2018	1 CCR 212-1 M 801	Transport: All Medical Marijuana Businesses	Revised	§44-11-202 and 44-11-406, C.R.S.	To provide clarity as to the requirements associated with the transport and delivery of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product between Licensed Premises. It also prescribes the manner in which licensed entities will track inventory in the transport process to prevent diversionary practices.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 901	Business Records Required	Revised	§44-11-202, C.R.S.	This rule explains what business records a Licensee must maintain. It also clarifies that such records must be made available to the Division on demand. Rule R 901(B) was added due to written commentary received from an industry representative.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 904	Medical Marijuana Business Reporting Requirements	Revised	§44-11-201, 44-11-202, 44-11-310, and 44-11-901, C.R.S.	The State Licensing Authority must know the individuals serving as managers of Medical Marijuana Businesses. Accordingly, this rule reiterates the statutory mandate that a Medical Marijuana Business must report any management change to the Division prior to the change. The rule also clarifies that a Medical Marijuana Business must save a copy of any management change report to the Division and that failure to follow this rule can result in discipline.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 1001.5	Labeling and Packaging Requirements: General Applicability	Repealed, effective July 1, 2018	§44-11-202, 44-11-403, 44-11-404, and 44-11-901, C.R.S.	Repealed, effective July 1, 2018. The M 1000 series rules were moved to series M 1000-1.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 1002.5	Packaging and Labeling of Medical Marijuana by an Optional Premises Cultivation Operation or a Medical Marijuana-Infused Products Manufacturer	Repealed, effective July 1, 2018	§44-11-202, 44-11-402, 44-11-404, and 44-11-901, C.R.S.	Repealed, effective July 1, 2018. The M 1000 series rules were moved to series M 1000-1.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 1003.5	Packaging and Labeling of Medical Marijuana Concentrate by an Optional Premises Cultivation Operation or a Medical Marijuana-Infused Products Manufacturer	Repealed, effective July 1, 2018	§44-11-202, 44-11-402, 44-11-404, and 44-11-901, C.R.S.	Repealed, effective July 1, 2018. The M 1000 series rules were moved to series M 1000-1.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 1004	Labeling Requirements: Specific Requirements, Medical Marijuana-Infused Product	Repealed, effective October 1, 2016	§44-11-202, C.R.S.	Repealed, effective October 1, 2016. Remove the word "Rule" to align with other M 1000 series repealed rules.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 1004.5	Packaging and Labeling Requirements of a Medical Marijuana Infused-Product by a Medical Marijuana-Infused Products Manufacturer	Repealed, effective July 1, 2018	§44-11-202, 44-11-402, 44-11-404, and 44-11-901, C.R.S.	Repealed, effective July 1, 2018. The M 1000 series rules were moved to series M 1000-1.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 1005	Packaging and Labeling of Medical Marijuana by a Medical Marijuana Center	Repealed, effective July 1, 2018	§44-11-202, 44-11-402, and 44-11-901, C.R.S.	Repealed, effective July 1, 2018. The M 1000 series rules were moved to series M 1000-1.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No

## Marijuana Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing 10/16/2018	1 CCR 212-1 M 1006	Packaging and Labeling of Medical Marijuana Infused-Product by a Medical Marijuana Center	Repealed, effective July 1, 2018	§44-11-202, 44-11-402, 44-11-404, and 44-11-901, C.R.S.	Repealed, effective July 1, 2018. The M 1000 series rules were moved to series M 1000-1.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 1007	Packaging and Labeling of Medical Marijuana Concentrate by a Medical Marijuana Center	Repealed, effective July 1, 2018	§44-11-202, 44-11-402, 44-11-404, and 44-11-901, C.R.S.	Repealed, effective July 1, 2018. The M 1000 series rules were moved to series M 1000-1.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 1001-1	Packaging and Labeling: Minimum Requirements Prior to Transfer to a Medical Marijuana Business	Revised	§44-11-202, 44-11-402, and 44-11-404, C.R.S.	To define minimum packaging and labeling requirements for Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product. Transferred between Medical Marijuana Businesses. The State Licensing Authority finds it essential to regulate and establish labeling requirements for Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product, and that this is in the interest of the health and safety of the people of Colorado. This rule identifies information that is required on all labels to provide information necessary for the Division to regulate the cultivation, production, and sale of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product. This rule also seeks to minimize, to the extent practicable, the burden of labeling compliance to licensees. The labeling requirements in this rule apply to all Containers immediately containing Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 1002-1	Packaging and Labeling: General Requirements Prior to Transfer to a Patient	Revised	§44-11-202, 44-11-402, and 44-11-404, C.R.S.	To define general packaging and labeling requirements for Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product prior to Transfer to a patient. The labeling requirements in this rule apply to all Containers immediately containing Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product. The State Licensing Authority finds it essential to regulate and establish labeling requirements for Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product and that this is in the interest of the health and safety of the people of Colorado. This rule identifies information that is required on all labels to provide necessary information to patients to make informed decisions and first responders in the event of accidental ingestion, over-ingestion, or allergic reaction. This rule also seeks to minimize, to the extent practicable, the burden of labeling compliance to licensees.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 1003-1	Additional Labeling Requirements Prior to Transfer to a Patient	Revised	§44-11-202, 44-11-402, and 44-11-404, C.R.S.	To define additional labeling requirements for Medical Marijuana, Medical Marijuana Concentrate, and/or Medical Marijuana-Infused Product (except Medical Marijuana seeds and immature plants) based on its intended use. These labeling requirements are in addition to, not in lieu of, the labeling requirements in Rule M 1002-1.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 1202	Requirement for Inspections and Investigations, Searches, Administrative Holds, Voluntary Surrenders and Such Additional Activities as May Become Necessary from Time to Time	Revised	§44-11-202, C.R.S.	This rule explains that Licensees must cooperate with Division employees when they are acting within the normal scope of their duties and that failure to do so may result in sanctions. It also explains the administrative hold process, the handling of inventory subject to administrative hold and under investigation and the process for voluntary surrender of Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 1204	Assurance of Voluntary Compliance	Revised	§44-11-202, C.R.S.	This rule explains that Division investigators may exercise discretion in issuing written warnings when, during the course of a compliance check or investigation, the Division investigator identifies a violation of the Medical Code or the rules promulgated thereunder. This rule also explains that the Director of the Division may exercise discretion to accept an assurance of voluntary compliance. It also explains the evidentiary value of a written warning or an assurance of voluntary compliance.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No

## Marijuana Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing 10/16/2018	1 CCR 212-1 M 1302	Summary Suspensions	Revised	§44-11-202, 44-11-601, 24-4-104, and 24-4-105, C.R.S.	To set forth the process for summary suspensions when the State Licensing Authority has cause to immediately suspend a license prior to and pending a hearing and final agency action. Summary suspension will be imposed when the State Licensing Authority has reason to believe and finds that a Licensee has been guilty of a deliberate and willful violation of any applicable law or regulation, or that the public health, safety, or welfare imperatively requires emergency action. The rule ensures proper due process for Licensees when their licenses are temporarily or summarily suspended by requiring prompt initiation of disciplinary proceedings after such suspensions. The purpose of the modifications to this rule is to clarify that the hearing following the Order of Summary Suspension concerns the allegations set forth in the Order to Show Cause.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 1303	Suspension Process: Regular and Summary Suspensions	Revised	§44-11-202, 44-11-601, 24-4-104, and 24-4-105, C.R.S.	The State Licensing Authority recognizes that if Licensees are not able to care for their products during a period of active suspension, then their plants could die, their edible products could deteriorate, and their on-hand inventory may not be properly maintained. Accordingly, this rule was written to clarify that Licensees whose licenses are summarily suspended may care for on-hand inventory, manufactured products, and plants during the suspension (unless the State Licensing Authority does not allow such activity), provided the Licensed Premises and all Medical Marijuana, Medical Marijuana Concentrate, and Medical Marijuana-Infused Product are adequately secured. In addition, the rule clarifies what activity is always prohibited during such suspension.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 1307	Penalties	Revised	§44-11-202, C.R.S.	To establish guidelines for enforcement and penalties that will be imposed by the State Licensing Authority for non-compliance with Medical Code, section 18-18-406.3(7), C.R.S., or any other applicable rule. The State Licensing Authority considered the type of violation and the threat of harm to the public versus purely administrative harm when setting the penalty structure. Based upon public testimony and a written commentary, Rule M 1307(A) was amended to include additional license violations affecting public safety and Rule M 1307(C.1) was added.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 1309	Administrative Warrants	Revised	§44-11-202, C.R.S.	To establish the circumstances under which the Division may seek from a district court an administrative warrant to search and/or seize marijuana and marijuana products, or other evidence indicating a violation of the Medical Code or rules. The Division has encountered circumstances that would have justified such a warrant. Establishing the criteria under which the Division may seek an administrative warrant will give fair notice to the regulated community regarding the types of violations that would lead to a request for an administrative warrant.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 1501	Medical Marijuana Testing Program - Contaminant Testing	Revised	§44-11-202, 44-11-402, and 44-11-404, C.R.S.	To protect the public health and safety by establishing the contaminant testing and related process validation portion of the Division's Medical Marijuana sampling and testing program.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	Yes
Hearing 10/16/2018	1 CCR 212-1 M 1504	Medical Marijuana Testing Program - Sampling Procedures	Revised	§44-11-202, 44-11-402, and 44-11-404, C.R.S.	To protect the public health and safety by establishing sampling procedures and rules for the Division's Medical Marijuana sampling and testing program.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	Yes
Hearing 10/16/2018	1 CCR 212-1 M 1507	Medical Marijuana Testing Program - Contaminated Product and Failed Test Results	Revised	§44-11-202, 44-11-402, and 44-11-404, C.R.S.	To protect the public health and safety by establishing rules governing the quarantining of potentially contaminated product and the destruction of product that failed contaminant or potency testing for the Division's Medical Marijuana sampling and testing program.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	Yes

## Marijuana Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing 10/16/2018	1 CCR 212-1 M 1702	Medical Marijuana Business Operators: General Limitations or Prohibited Acts	Revised	§44-11-202 and 44-11-401, C.R.S.	To clarify those acts that are limited in some fashion, or prohibited, by a Medical Marijuana Business Operator.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-1 M 1901	Research and Development Licensees: License Privileges	Revised	§44-11-202, 44-11-404, 44-11-405, and 44-11-408, C.R.S.	To establish that it is unlawful for Licensed Research Businesses to exercise any privilege other than those granted by the State Licensing Authority. The purpose of this rule also is to clarify the distinct privileges granted to Marijuana Research and Development Facilities and Marijuana Research and Development Cultivations.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	Yes
Hearing 10/16/2018	1 CCR 212-1 M 1902	Research and Development Licensees: General Limitations and Prohibited Acts	Revised	§44-11-202, 44-11-310, 44-11-405, and 44-11-408, C.R.S.	To clarify those acts that are prohibited, or limited in some fashion, by a Licensed Research Business.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	Yes
Hearing 10/16/2018	1 CCR 212-1 M 1903	Research and Development Licensees: Inventory Tracking	Revised	§44-11-202 and 44-11-408, C.R.S.	To require all Licensed Research Businesses to track all inventory from the point it is Propagated or received to the point when it is destroyed, used in a Research Project, or, if permitted, Transferred to another Licensed Research Business or another Medical Marijuana Business. The purpose of this rule is also to eliminate diversion of Medical Marijuana.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	Yes
Hearing 10/16/2018	1 CCR 212-1 M 1904	Licensed Research Businesses: Project Approval	Revised	§44-11-202 and 44-11-408, C.R.S.	To ensure that any research or development conducted by a Licensed Research Business shall be in furtherance of a Research Project approved by the Division. The purpose of this rule is also to establish the applicable requirements necessary for Licensed Research Businesses to seek and receive Division approval for all proposed Research Projects.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	Yes
Hearing 10/16/2018	1 CCR 212-1 M 1905	Research and Development Licensees: Testing	Revised	§44-11-202, 44-11-405, and 44-11-408, C.R.S.	To establish the limited research purposes authorized for Licensed Researched Businesses. The purpose of this rule is also to establish additional requirements for Research Projects involving human subjects and animal subjects, as well as restrictions on the use of Pesticides. The rule also establishes reporting requirements and explains when the State Licensing Authority may require a Licensed Research Business to undergo an audit of its research activities.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	Yes
Hearing 10/16/2018	1 CCR 212-2 R 103	Definitions	Revised	§44-12-103 and 44-12-202, C.R.S.	To clarify existing definitions, establish definitions as part of implementation of HB17-1034, SB17-192, SB17-187 and HB17-1367, pursuant to the State Licensing Authority's rulemaking authority.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	Yes
Hearing 10/16/2018	1 CCR 212-2 R 201	Application Process	Revised	§44-12-102, 44-12-103, 44-12-202, 44-12-303, 44-12-306, 44-12-309, 44-12-312, 44-12-401, and 24-76.5-101, et seq., C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (III).	To establish that only materially complete applications for licenses, accompanied by all required fees, will be accepted and processed by the Division. The purpose of the rule is also to clarify that when an initial application is materially complete and accepted, but the Division determines further information is required before the application can be fully processed, the Applicant must provide the additional requested information within the time frame provided by the Division. Otherwise, the Division cannot act on the application in a timely manner, and the application may be denied.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No



## Marijuana Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing 10/16/2018	1 CCR 212-2 R 203	Process for Renewing a License: Retail Marijuana Establishments	Revised	§44-12-103, 44-12-202, and 44-12-310, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (I).	To establish how licenses can be renewed.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 204	Ownership Interests of a License: Retail Marijuana Establishments	Revised	§44-12-103, 44-12-202, 44-12-306, 44-12-309, 44-12-312, 44-12-601, 44-12-901, and 24-76.5-101 et seq., C.R.S.	To provide clarity regarding the nature of a Direct Beneficial Interest Owner and an Indirect Beneficial Interest Owner, and to clarify what factors the State Licensing Authority generally considers regarding the same. The Division will review all relevant information to determine ownership of a Retail Marijuana Establishment.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 204.5	Disclosure, Approval and Review of Business Interests	Revised	§44-12-103, 44-12-202, 44-12-303, 44-12-305, 44-12-306, 44-12-308, 44-12-309, and 44-12-312, C.R.S.	To clarify the application, review and approval process for various types of Business Interests. The Division will review all relevant information to determine ownership of, interests in, and control of a Retail Marijuana Establishment.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 210	Schedule of Other Application Fees: All Licensees	Revised	§44-12-103, 44-12-202, 44-12-303, 44-12-401, 44-12-501, 44-12-502, 44-12-1101, and 44-12-1102, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (II).	To establish basic requirements for all Division applications and help the regulated community understand procedural licensing requirements.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	Yes
Hearing 10/16/2018	1 CCR 212-2 R 211	Conversion - Medical Marijuana Business to Retail Marijuana Establishment Pursuant to 44-12-104(1)(a)(I), C.R.S.	Revised	§44-12-103, 44-12-104, 44-12-202, and 44-12-501, C.R.S.	To clarify that, with the exception of Medical Marijuana Testing Facilities, Medical Marijuana Business Operators and Medical Marijuana Business Transporters, an existing Medical Marijuana Business may apply to convert a Medical Marijuana Business License to a Retail Marijuana Establishment License or may apply to obtain one additional license to operate a Retail Marijuana Establishment. It is important to note that the State Licensing Authority considers each license issued as separate and distinct. Each license, whether it is in the same location or not, is fully responsible to maintain compliance with all statutes and rules promulgated regardless of whether or not they are located in a shared address.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 231	Qualifications for Licensure and Residency	Revised	§44-12-103, 44-12-201, 44-12-202, 44-12-304, 44-12-305, 44-12-306, 24-18-105, and 24-76.5-101, et seq., C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (III).	To clarify the qualifications for licensure, including, but not limited to, background investigations for Direct Beneficial Interest Owners, Indirect Beneficial Interest Owners, contractors, employees, and other support staff of licensed entities.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 231.1	Finding of Suitability, Residency and Reporting Requirements for Direct Beneficial Interest Owners	Revised	§44-12-103, 44-12-201, 44-12-202, 44-12-303, 44-12-304, 44-12-306, 24-18-105, and 24-76.5-101, et seq., C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (III).	To clarify the qualifications for Direct Beneficial Interest Owners.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 250	Licensee Required to Keep Mailing Address Current with the Division: All Licensees	Revised	§44-12-105, 44-12-202, and 44-12-601, C.R.S.	To clarify that a Licensee must keep its mailing address current with the Division.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No



## Marijuana Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing 10/16/2018	1 CCR 212-2 R 251	Application Denial and Voluntary Withdrawal: All Licensees	Revised	§44-12-202, 44-12-304, 24-4-104, and 24-4-105, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(i).	To establish what factors the State Licensing Authority will consider when denying an application for licensure.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 253	Temporary Appointee Registrations for Court Appointees	New	§44-12-202 and 44-12-401, C.R.S.	To establish procedures and requirements for any Person appointed by a court as a receiver, personal representative, executor, administrator, guardian, conservator, trustee, or similarly situated Person acting in accordance with section 44-12-401(1.5), C.R.S., and authorized by court order to take possession of, operate, manage, or control a Retail Marijuana Establishment.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 304.1	Medical Marijuana Business and Retail Marijuana Establishment - Shared Licensed Premises and Operational Separation	Revised	§44-12-104, 44-12-202, 44-12-401, 44-12-404, 44-12-405, and 44-12-406, C.R.S.	To establish guidelines for the manner in which a Medical Marijuana Business may share its existing Licensed Premises with a Licensed Retail Marijuana Establishment, and to ensure the proper separation of a Medical Marijuana Business operation from Retail Marijuana Establishment operation.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 305	Security Alarm Systems and Lock Standards	Revised	§44-12-202, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(IV).	To ensure adequate control of the Licensed Premises and Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product contained therein. This rule also establishes the minimum guidelines for security requirements for alarm systems and commercial locking mechanisms for maintaining adequate security.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 307	Waste Disposal	Revised	§44-12-202, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(IV).	To establish waste disposal requirements for Retail Marijuana Establishments. The State Licensing Authority modeled this rule after its Medical Marijuana rules.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 307.5	Transfers of Fibrous Waste	New	§44-12-202, C.R.S.	To establish conditions under which a Licensee is authorized to Transfer Fibrous Waste to a Person for the purpose of producing only Industrial Fiber Products.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 308	Selling and Serving, Retail Marijuana and Retail Marijuana Product - Hours of Operation	Revised	§44-12-202 and 44-12-301, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(f).	To establish hours of operation requirements for Retail Marijuana Establishments. The State Licensing Authority modeled this rule after the Colorado Department of Revenue's liquor rules. Based upon written comments and testimony during working groups and public hearings, this rule was amended to remove restrictions on the hours during which initiating the transportation of Retail Marijuana and Retail Marijuana Product is permitted.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 309	Retail Marijuana Establishments: Inventory Tracking System	Revised	§44-12-104, 44-12-201, 44-12-202, 44-12-402, 44-12-403, and 44-12-404, C.R.S.	To establish a system that will allow the State Licensing Authority and the industry to jointly track Retail Marijuana and Retail Marijuana Product from either seed or immature plant stage until the Retail Marijuana or Retail Marijuana Product is sold to the customer or destroyed.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 402	Retail Marijuana Sales: General Limitations or Prohibited Acts	Revised	§44-12-105, 44-12-202, 44-12-401, 44-12-402, and 44-12-901, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(3)(a), 16(5)(a)(V) and 16(5)(a)(VIII).	To clarify those acts that are limited in some fashion, or prohibited, by a licensed Retail Marijuana Store.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No

## Marijuana Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing 10/16/2018	1 CCR 212-2 R 404	Acceptable Forms of Identification for Retail Sales	Revised	§44-12-202 and 44-12-402, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsections 16(5)(a)(V).	To establish guidelines for the acceptable forms of identification for verifying the lawful sale of Retail Marijuana, Retail Marijuana Concentrate, or Retail Marijuana Product.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 406	Retail Marijuana Store: Health and Safety Regulations	Revised	§44-12-202, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(VII).	It sets forth general standards and basic sanitary requirements for Retail Marijuana Stores. It covers the physical premises where the products are made as well as the individuals handling the products. This rule also authorizes the State Licensing Authority to require an independent consultant to conduct a health and sanitary audit of a Retail Marijuana Store. This rule explains when an independent health and sanitary audit may be deemed necessary and sets forth possible consequences of a Retail Marijuana Establishment's refusal to cooperate or pay for the audit. The State Licensing Authority intends for this rule to reduce any product contamination, which will benefit both the Licensees and consumers. The State Licensing Authority modeled this rule after those adopted by the Colorado Department of Public Health and Environment. Overall, the State Licensing Authority intends this rule to help maintain the integrity of Colorado's Retail Marijuana businesses and the safety of the public.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 407	Retail Marijuana Store: Responsible Vendor Program	Revised	§44-12-202, 44-12-1101, and 44-12-1102, C.R.S.	To establish minimum standards for responsible vendor programs that provide training to personnel at Retail Marijuana Stores seeking designation as a "responsible vendor." It sets forth general standards and basic requirements for responsible vendor programs. This rule also establishes the timeframe for new staff to complete a responsible vendor program and the requirements for recertification. The State Licensing Authority intends this rule to help maintain the integrity of Colorado's Retail Marijuana Stores.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 501	Retail Marijuana Cultivation Facility: License Privileges	Revised	§44-12-202, 44-12-401, 44-12-403, 44-12-404, and 44-12-406, C.R.S.	To establish that it is unlawful for a Retail Marijuana Cultivation Facility to exercise any privileges other than those granted by the State Licensing Authority and to clarify the license privileges.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 502	Retail Marijuana Cultivation Facility: General Limitations or Prohibited Acts	Revised	§44-12-202, 44-12-403, 44-12-406, and 44-12-901, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a)(V).	To clarify those acts that are limited in some fashion, or prohibited, by a Retail Marijuana Cultivation Facility.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 503	Retail Marijuana Cultivation Facility: Inventory Tracking System	Revised	§44-12-202 and 44-12-403, C.R.S.	To establish a Retail Marijuana Cultivation Facility's obligation to account for and track all inventories on the Licensed Premises from seed or cutting to Transfer to other Retail Marijuana Establishments.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 504	Retail Marijuana Cultivation Facility: Health and Safety Regulations	Revised	§44-12-202, C.R.S.	To establish minimum health and safety regulation for Retail Marijuana Cultivation Facilities. The rule prohibits a Retail Marijuana Cultivation Facility from treating or otherwise adulterating Retail Marijuana with any chemical or other compound whatsoever to alter its color, appearance, weight or smell. This rule also authorizes the State Licensing Authority to require an independent consultant to conduct a health and sanitary audit of a Retail Marijuana Cultivation Facility. This rule explains when an independent health and sanitary audit may be deemed necessary and sets forth possible consequences of a Retail Marijuana Establishment's refusal to cooperate or pay for the audit.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No

## Marijuana Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing 10/16/2018	1 CCR 212-2 R 505	Retail Marijuana Cultivation Facilities: Retail Marijuana Concentrate Production	Revised	§44-12-202, 44-12-403, and 44-12-405, C.R.S.	To establish the categories of Retail Marijuana Concentrate that may be produced at a Retail Marijuana Cultivation Facility and standards for the production of Retail Marijuana Concentrate.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 506	Retail Marijuana Cultivation Facility: Production Management	Revised	§44-12-103, 44-12-104, 44-12-202, and 44-12-501, C.R.S.	The rule establishes a means by which to manage the overall production of Retail Marijuana. The intent of this rule is to encourage responsible production to meet demand for retail marijuana, while also avoiding overproduction or underproduction. The establishment of production management is necessary to ensure there is not significant under or over production, either of which will increase incentives to engage in diversion and facilitate the continuation of the sale of illegal marijuana.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 507	Sampling Unit Protocols	New	§44-12-202 and 44-12-403, C.R.S.	To establish the circumstances under which a Retail Marijuana Cultivation Facility may provide Sampling Units to a designated Sampling Manager for quality control or product development purposes. In order to maintain the integrity of Colorado's regulated Medical Marijuana Businesses, this rule establishes limits on the amount of Sampling Units a Sampling Manager may receive in a calendar month and imposes inventory tracking, reporting and recordkeeping requirements on a Retail Marijuana Cultivation Facility that Transfer Sampling Units.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 601	Retail Marijuana Products Manufacturing Facilities: License Privileges	Revised	§44-12-202, 44-12-305, 44-12-309, 44-12-403, 44-12-404, and 44-12-406, C.R.S.	To establish that it is unlawful for a Retail Marijuana Products Manufacturing Facility to exercise any privileges other than those granted by the State Licensing Authority and to clarify the license privileges.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 602	Retail Marijuana Products Manufacturing Facility: General Limitations or Prohibited Acts	Revised	§44-12-202, 44-12-309, 44-12-404, 44-12-406, and 44-12-901, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (V).	To clarify those acts that are limited in some fashion or prohibited by a Retail Marijuana Products Manufacturing Facility.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 603	Retail Marijuana Products Manufacturing Facility: Inventory Tracking System	Revised	§44-12-202, 44-12-404, and 44-12-406, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (VII).	To require all Retail Marijuana Products Manufacturing Facilities to track all inventory from the point it is received from a Retail Marijuana Cultivation Facility, Retail Marijuana Products Manufacturing Facility, or Retail Marijuana Transporter through any manufacturing processes, to the point of sale or Transfer to another Retail Marijuana Establishment.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 605	Retail Marijuana Products Manufacturing Facility: Retail Marijuana Concentrate Production	Revised	§44-12-202, C.R.S.	To establish the categories of Retail Marijuana Concentrate that may be produced at a Retail Marijuana Products Manufacturing Facility and establish standards for the production of Retail Marijuana Concentrate. Nothing in this rule authorizes the unlicensed practice of engineering under Article 25 of Title 12, C.R.S.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 606	Sampling Unit Protocols	New	§44-12-202 and 44-12-404, C.R.S.	To establish the circumstances under which a Retail Marijuana Products Manufacturing Facility may provide Sampling Units to a designated Sampling Manager for quality control or product development purposes. In order to maintain the integrity of Colorado's regulated Medical Marijuana Businesses, this rule establishes limits on the amount of Sampling Units a Sampling Manager may receive in a calendar month and imposes inventory tracking, reporting and recordkeeping requirements on a Retail Marijuana Products Manufacturing Facility that Transfer Sampling Units.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No

## Marijuana Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing 10/16/2018	1 CCR 212-2 R 607	Retail Marijuana Products Manufacturing Facility: Audited Product and Alternative Use Product	New	§44-12-202, 44-12-404, and 44-12-901, C.R.S.	To define requirements for manufacture of Audited Product for administration by: (1) metered dose nasal spray, (2) pressurized metered dose inhaler, (3) vaginal administration, or (4) rectal administration which may raise public health concerns. This rule defines audit, insurance, minimum product requirements, minimum production process requirements, and pre-production testing requirements for Retail Marijuana Products Manufacturers that manufacture Audited Products. The purpose of this rule further recognizes that Alternative Use Product not within an intended use identified in Rule M 1003-1 may raise public health concerns that outweigh its manufacture or Transfer entirely or that require additional safeguards to protect public health and safety prior to manufacturer or Transfer. This rule identifies general requirements for Retail Marijuana Products Manufacturer to seek an Alternative Use Designation from the State Licensing Authority to manufacture any type of Retail Marijuana Product that is not within an intended use identified in Rule R 1003-1.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 701	Retail Marijuana Testing Facilities: License Privileges	Revised	§44-12-202, 44-12-309, 44-12-402, 44-12-403, 44-12-404, 44-12-405, 35-61-104, and 35-61-105.5, C.R.S.	To establish that it is unlawful for a Retail Marijuana Testing Facility Licensee to exercise any privileges other than those granted by the State Licensing Authority and to clarify the license privileges.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 702	Retail Marijuana Testing Facilities: General Limitations or Prohibited Acts	Revised	§44-12-105, 44-12-202, 44-12-405, 44-12-901, 35-61-104, and 35-61-105.5, C.R.S.	To clarify those acts that are limited in some fashion, or prohibited, by a Retail Marijuana Testing Facility.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 703	Retail Marijuana Testing Facilities: Certification Requirements	Revised	§44-12-202 and 44-12-405, C.R.S.	To establish a frame work for certification for Retail Marijuana Testing Facilities.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 712	Retail Marijuana Testing Facilities: Sampling and Testing Program	Revised	§44-12-202 and 44-12-405, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (VII).	To establish the portion of the Division's Mandatory Testing and Random Sampling program that is applicable to Retail Marijuana Testing Facilities. The allowable plus or minus 15% potency variance has been included in the rule pursuant to the mandate of House Bill 15-1283, which modified 44-12-202(3) (a)(IV)(E), C.R.S. The bill established that the acceptable potency variance, which the Division must determine, must be at least plus or minus 15 percent.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 801	Transport: All Retail Marijuana Establishments	Revised	§44-12-202, 44-12-309, 44-12-401, and 44-12-406, C.R.S.	To provide clarity as to the requirements associated with the transport and delivery of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product between Licensed Premises. It also prescribes the manner in which licensed entities will track inventory in the transport process to prevent diversionary practices.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 901	Business Records Required	Revised	§44-12-202, 44-12-301, and 44-12-701, C.R.S.	This rule explains what business records a Licensee must maintain and clarifies that such records must be made available to the Division on demand. Rule R 901(B) was added due to written commentary received from an industry representative.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 904	Retail Marijuana Establishment Reporting Requirements	Revised	§44-12-201, 44-12-202, 44-12-309, and 44-12-901, C.R.S.	The State Licensing Authority must be able to immediately access information regarding a Retail Marijuana Establishment's managing individual. Accordingly, this rule reiterates the statutory mandate that Licensees provide any management change to the Division within seven days of any change, and also clarifies that a Licensee must save a copy of any management change report to the Division, and clarifies that failure to follow this rule can result in discipline.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No

## Marijuana Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing 10/16/2018	1 CCR 212-2 R 1001	Labeling and Packaging Requirements: General Applicability	Repealed, effective July 1, 2018	§44-12-202, 44-12-402, 44-12-404, and 44-12-901, C.R.S.	Repealed, effective July 1, 2018. The R 1000 series rules were moved to series R 1000-1.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 1002.5	Packaging and Labeling of Retail Marijuana by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility	Repealed, effective July 1, 2018	§44-12-202, 44-12-403, 44-12-404, and 25-4-1614, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (VI).	Repealed, effective July 1, 2018. The R 1000 series rules were moved to series R 1000-1.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 1003.5	Packaging and Labeling of Retail Marijuana Concentrate by a Retail Marijuana Cultivation Facility or a Retail Marijuana Products Manufacturing Facility	Repealed, effective July 1, 2018	§44-12-202, 44-12-403, 44-12-404, and 25-4-1614, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (VI).	Repealed, effective July 1, 2018. The R 1000 series rules were moved to series R 1000-1.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 1004	Packaging and Labeling Requirements of a Retail Marijuana Product by a Retail Marijuana Products Manufacturing Facility	Repealed, effective July 1, 2018	§44-12-202, 44-12-404, 44-12-901, and 25-4-1614, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (VI).	Repealed, effective July 1, 2018. The R 1000 series rules were moved to series R 1000-1.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 1005.5	Packaging and Labeling of Retail Marijuana by a Retail Marijuana Store	Repealed, effective July 1, 2018	§44-12-202, 44-12-402, and 25-4-1614, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (VI).	Repealed, effective July 1, 2018. The R 1000 series rules were moved to series R 1000-1.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 1006	Packaging and Labeling of Retail Marijuana Product by a Retail Marijuana Store	Repealed, effective July 1, 2018	§44-12-202, 44-12-402, 44-12-901, and 25-4-1614, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (VI).	Repealed, effective July 1, 2018. The R 1000 series rules were moved to series R 1000-1.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 1007.5	Packaging and Labeling of Retail Marijuana Concentrate by a Retail Marijuana Store	Repealed, effective July 1, 2018	§44-12-202, 44-12-402, and 25-4-1614, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (VI).	Repealed, effective July 1, 2018. The R 1000 series rules were moved to series R 1000-1.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 1001-1	Packaging and Labeling: Minimum Requirements Prior to Transfer to a Retail Marijuana Establishment	Revised	§44-12-202, 44-12-402, and 44-12-404, C.R.S.	To define minimum packaging and labeling requirements for Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product transferred between Retail Marijuana Establishments. The State Licensing Authority finds it essential to regulate and establish labeling requirements for Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product and that this is in the interest of the health and safety of the people of Colorado. This rule identifies information that is required on all labels to provide information necessary for the Division to regulate the cultivation, production and sale of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. This rule also seeks to minimize, to the extent practicable, the burden of labeling compliance to Licensees. The labeling requirements in this rule apply to all Containers immediately containing Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product.	Licenseses, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No

## Marijuana Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing 10/16/2018	1 CCR 212-2 R 1002-1	Packaging and Labeling: General Requirements Prior to Transfer to Consumer	Revised	§44-12-202, 44-12-402, and 44-12-404, C.R.S.	To define general packaging and labeling requirements for Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product prior to Transfer to a consumer. The labeling requirements in this rule apply to all Containers immediately containing Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product. The State Licensing Authority finds it essential to regulate and establish labeling requirements for Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product and that this is in the interest of the health and safety of the people of Colorado. This rule identifies information that is required on all labels to provide necessary information to consumers to make informed decisions and first responders in the event of accidental ingestion, over ingestion or allergic reaction. This rule also seeks to minimize, to the extent practicable, the burden of labeling compliance to Licensees.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 1003-1	Additional Labeling Requirements Prior to Transfer to Consumer	Revised	§44-12-202, 44-12-402, and 44-12-404, C.R.S.	To define additional labeling requirements for Retail Marijuana, Retail Marijuana Concentrate, and/or Retail Marijuana Product (except Retail Marijuana seeds and Immature plants) based on its intended use. These labeling requirements are in addition to, not in lieu of, the labeling requirements in Rule R 1002-1.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 1202	Requirement for Inspections and Investigations, Searches, Administrative Holds, Voluntary Surrenders and Such Additional Activities as May Become Necessary from Time to Time	Revised	§44-12-202 and 44-12-602, C.R.S.	This rule explains that Licensees must cooperate with Division employees when they are acting within the normal scope of their duties and that failure to do so may result in sanctions. It also explains the administrative hold process, the handling of inventory subject to administrative hold and under investigation and the process for voluntary surrender of Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 1204	Assurance of Voluntary Compliance	Revised	§44-12-202, C.R.S.	This rule explains that Division investigators may exercise discretion in issuing written warning when, during the course of a compliance check or investigation, the Division investigator identifies a violation(s) of the Retail Code or the rules promulgated thereunder. This rule also explains that the Director of the Division may exercise discretion to accept an assurance of voluntary compliance. It also explains the evidentiary value of a written warning or an assurance of voluntary compliance.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 1302	Summary Suspensions	Revised	§44-12-202, 44-12-601, 24-4-104, and 24-4-105, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (i).	to set forth the process for summary suspensions when the State Licensing Authority has cause to immediately suspend a license prior to and pending a hearing and final agency order. Summary suspensions will be imposed when the State Licensing Authority has reason to believe and finds that a Licensee has been guilty of a deliberate and willful violation of any applicable law or regulation, or that the public health, safety, and welfare imperatively require emergency action. The rule ensures proper due process for Licensees when their licenses are temporarily or summarily suspended by requiring prompt initiation of disciplinary proceedings after such suspensions. The purpose of the modifications to this rule is to clarify that the hearing following the Order of Summary Suspension concerns the allegations set forth in the Order to Show Cause.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 1303	Suspension Process: Regular and Summary Suspensions	Revised	§44-12-202, 44-12-601, 24-4-104, and 24-4-105, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (i).	The State Licensing Authority recognizes that if Licensees are not able to care for their products during a period of active suspension, then their plants could die, their edible products could deteriorate, and their on-hand inventory may not be properly maintained. Accordingly, this rule was written to clarify that Licensees whose licenses are summarily suspended may care for on-hand inventory, manufactured products, and plants during the suspension (unless the State Licensing Authority does not allow such activity), provided the Licensed Premises and all Retail Marijuana, Retail Marijuana Concentrate, and Retail Marijuana Product are adequately secured. In addition, the rule clarifies what activity is always prohibited during such suspension.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No

## Marijuana Enforcement Division 2018 Regulatory Agenda Report

The Colorado Department of Revenue (CDOR) submits the following 2018 Departmental Regulatory Agenda Report (Report) in fulfillment of the statutory requirements set forth in §2-7-202(6), 2-7-203, and 24-4-103.3(4), C.R.S. Pursuant to state law, annually on November 1 executive-branch agencies must file the Report in order to provide results of the past year's rulemaking activity. Pursuant to §2-7-202(6), C.R.S., the Report must contain:

(f) Commencing with departmental regulatory agendas submitted on and after November 1, 2013, a list and brief summary of all permanent and temporary rules actually adopted since the previous departmental regulatory agenda was filed.

Pursuant to §24-4-103.3(4), C.R.S., the Report must contain:

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

The Agenda is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on CDOR's website, and submitted to the State Library, the Colorado Department of Regulatory Agencies, and the Secretary of State for publication in the Colorado Register.

CDOR must also present its Report as part of its "SMART Act" presentation pursuant to §2-7-203(2)(a), C.R.S.

CDOR works with several boards and commissions that promulgate rules; for ease of use for the consumer, those rules are included in CDOR's Report.

The Report covers Calendar Year 2018 (CY18). Rules that will be completed after November 1, 2018, are marked as "ongoing".

Date	Rule Number	Rule Title (or Description)	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders	Status	Included on CY18 Agenda?
Hearing 10/16/2018	1 CCR 212-2 R 1307	Penalties	Revised	§44-12-202 and 44-12-601, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (IX).	To establish guidelines for enforcement and penalties that will be imposed by the State Licensing Authority for non-compliance with Retail Code, section 18-18-406.3(7), or any other applicable rule. The State Licensing Authority considered the type of violation and the threat of harm to the public versus purely administrative harm when setting the penalty structure. Based upon public testimony and a written commentary, Rule R 1307(A) was amended to include additional license violations affecting public safety and Rule R 1307(C.1) was added.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 1309	Administrative Warrants	Revised	§44-12-202, C.R.S.	To establish the circumstances under which the Division may seek from a district court an administrative warrant to search and/or seize marijuana and marijuana products, or other evidence indicating a violation of the Retail Code or rules. The Division has encountered circumstances that would have justified such a warrant. Establishing the criteria under which the Division may seek an administrative warrant will give fair notice to the regulated community regarding the types of violations that would lead to a request for an administrative warrant.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No
Hearing 10/16/2018	1 CCR 212-2 R 1501	Retail Marijuana Testing Program - Contaminant Testing	Revised	§44-12-202, 44-12-402, 44-12-403, and 44-12-404, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (VII).	To protect the public health and safety by establishing the contaminant testing and related process validation portion of the Division's Retail Marijuana sampling and testing program.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	Yes
Hearing 10/16/2018	1 CCR 212-2 R 1502	Retail Marijuana Testing Program - Mandatory Testing	Revised	§44-12-202, 44-12-402, 44-12-403, and 44-12-404, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (VII).	To protect the public health and safety by establishing the mandatory testing portion of the Division's Retail Marijuana sampling and testing program.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	Yes
Hearing 10/16/2018	1 CCR 212-2 R 1504	Retail Marijuana Testing Program - Sampling Procedures	Revised	§44-12-202, 44-12-402, 44-12-403, and 44-12-404, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (VII).	To protect the public health and safety by establishing sampling procedures and rules for the Division's Retail Marijuana sampling and testing program.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	Yes
Hearing 10/16/2018	1 CCR 212-2 R 1507	Retail Marijuana Testing Program - Contaminated Product and Failed Test Results	Revised	§44-12-202, 44-12-402, 44-12-403, and 44-12-404, C.R.S.  Authority also exists in the Colorado Constitution at Article XVIII, Subsection 16(5)(a) (VII).	To protect the public health and safety by establishing rules governing the quarantining of potentially contaminated product and the destruction of product that failed contaminant or potency testing for Division's Retail Marijuana Sampling and Testing Program.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	Yes
Hearing 10/16/2018	1 CCR 212-2 R 1702	Retail Marijuana Establishment Operators: General Limitations or Prohibited Acts	Revised	§44-12-202, 44-12-407, and 44-12-901, C.R.S.	To clarify those acts that are limited in some fashion, or prohibited, by a Retail Marijuana Establishment Operator.	Licensees, Division listserv subscribers, local licensing authorities, local law enforcement, healthcare providers, researchers, public safety advocates, Colorado Department of Agriculture, Colorado Department of Public Health and Environment and general public.	Ongoing	No

## **Departmental Regulatory Agendas**

### **Department**

Department of Health Care Policy and Financing





## COLORADO

### Department of Health Care Policy & Financing

Department of Health Care Policy & Financing  
1570 Grant Street  
Denver, CO 80203

November 1, 2018

Members of the Colorado General Assembly  
c/o the Staff of the Legislative Council  
State Capitol Building  
200 East Colfax  
Denver, Colorado 80203

Dear Members of the General Assembly:

I am pleased to submit the Department of Health Care Policy and Financing (HCPF)'s 2018 Regulatory Agenda Report and 2019 Regulatory Agenda, in compliance with Colo. Rev. Stat. §2-7-203, as amended by House Bill 12-1008. The Department's 2019 Regulatory Agenda has also been submitted to the Colorado Secretary of State for publication in the Colorado Register, and will be posted to our website.

The Department's 2018 Regulatory Agenda Report provides a brief summary of all permanent, temporary and emergency rules reviewed, revised and adopted since the Department's 2017 Departmental Regulatory Agenda was filed on November 1, 2017, as well as the status, comments, and information relative to stakeholder input. Pursuant to Colo. Rev. Stat. § 24-4-103.3(4), the 2018 Regulatory Agenda Report also reflects the results of the Department's mandatory rule review activity over the past year. Effective July 1, 2016, all permanent rules adopted by the Department, as reflected in the 2018 Regulatory Agenda Report, involved early stakeholder engagement, as described by the Department's procedures for public participation in rulemaking (available online at <https://www.colorado.gov/hcpf/regulatory-resource-center>).

Information pertaining to a specific rule can be obtained by contacting Chris Sykes, whose contact information is available on the Department's web-site at <https://www.colorado.gov/pacific/hcpf/medical-services-board>.

Pursuant to Colo. Rev. Stat. §2-7-203(2)(a)(II), we will be prepared to discuss our 2018 Regulatory Agenda Report and 2019 Regulatory Agenda with the Department's Joint Committee of Reference during our upcoming SMART Act hearing.

Sincerely,

Kim Bimestefer, Executive Director  
Department of Health Care Policy and Financing

Our mission is to improve health care access and outcomes for the people we serve while demonstrating sound stewardship of financial resources.  
[www.colorado.gov/hcpf](http://www.colorado.gov/hcpf)



Cc: Legislative Council Library  
State Library  
John Bartholomew, Finance Office Director, HCPF  
Laurel Karabatsos, Health Programs Office Director & Interim Medicaid Director, HCPF  
Tom Massey, Policy, Communications, and Administration Office Director, HCPF  
Bonnie Silva, Community Living Interim Office Director, HCPF  
Chris Underwood, Health Information Office Director, HCPF  
Stephanie Ziegler, Cost Control & Quality Improvement Office Director, HCPF  
Rachel Reiter, External Relations Division Director, HCPF  
David DeNovellis, Legislative Liaison, HCPF  
Chris Sykes, Medical Services Board Coordinator, HCPF

Our mission is to improve health care access and outcomes for the people we serve while  
demonstrating sound stewardship of financial resources.  
[www.colorado.gov/hcpf](http://www.colorado.gov/hcpf)



# 2018

## Regulatory Agenda REPORT

January 1, 2018-December 31, 2018



**COLORADO**

Department of Health Care  
Policy & Financing

## Overview

The Colorado Department of Health Care Policy and Financing submits the following 2018 Regulatory Agenda Report in fulfillment of the statutory requirements set forth in Colo. Rev. Stat. §2-7-203(4), detailing the results of the past year's rules review activity.

Hearing or Adoption Date	Rule Number	Rule Title	New Rule, Revision, or Repeal?	Statutory or Other Basis for Adoption of Rule	Purpose of Proposed Rule	High-Level Stakeholders <i>Consider including high-level outreach bullets</i>	Status <i>Adopted/Not Adopted/Withdrawn/Ongoing</i>	Included on FY17 Agenda?
<i>Department may choose to include the originally anticipated hearing or adoption date, in addition to the actual date.</i>			<i>If only a part of a CCR is repealed, it should be classified as "Revise".</i>	<i>Statutory authority.</i>	<i>What is the rule intended to accomplish?</i>	<i>List categories of stakeholders that may be positively or negatively affected not individual stakeholders.</i>	<i>Select one of the following options: (a) adopted (include date of adoption), (b) not adopted, (c) withdrawn or (d) ongoing.</i>	<i>Select one of the following options: (a) Yes, if the rule was published in the FY17 Agenda, and (b) No, if the rule was unplanned or an emergency rule.</i>
January 2018	MSB 17-10-05-A	Revision to the Medical Assistance Special Financing Division Rule Concerning Colorado Dental Health Care Program for Low-Income Seniors, Section 8.960	Revise	25.5-3-404, C.R.S.	This rule change incorporates the new code changes in the American Dental Association CDT 2018 Code book into Appendix A.	Grantees of the Colorado Dental Health Care Program for Low-Income Seniors	A January 2018	B

February 2018	MSB 17-11-17-A	Revision to the Medical Assistance Rule Concerning Client Co-Payment, Section 8.754	Revise	42 CFR 447.52, 447.53	In accordance with 25.5-4-209(1)(c)(1), C.R.S., client co-payment for pharmacy services, hospital outpatient services, and non-emergency services in the emergency room are being increased, effective January 1, 2018	Health First Colorado members	A February 2018	B
March 2018	MSB 17-10-17-A	Revision to the Medical Assistance Rule concerning In-Home Support Services, Section 8.5520	Revise	25.5-6-1203 through 25.5-6-1205, C.R.S.	The rule amendment promotes case management initiation of services, coordination, and authority.	Health First Colorado members, providers.	A March 2018	B
March 2018	MSB 17-11-03-A	Revision to the Medical Assistance Rule concerning Nursing Facility Post Eligibility Treatment of Income - Incurred Medical Expenses, Section 8.482.33	Revise	1902(r)(1)(A) of the Social Security Act, 42 CFR § 435.832	The rule change updates regulations to reflect recent changes in related Medicaid State Plan Benefits. Nursing Facility PETI should not be used if a service is billable under the State Plan. The rule also	Health First Colorado members, providers.	A March 2018	A

					applies standard timely filing deadlines which were previously unaddressed			
April 2018	MSB 17-11-22-A	Revision to the Medical Assistance Rule concerning Outpatient Fee-for-Service SUD Providers Eligible Providers, Section 8.746.2	Revise	C.F.R. 42 §440.130(d)	This rule change expands the provider types that are eligible to bill Medicaid for providing substance use disorder services	Health First Colorado members, providers.	A April 2018	B
April 2018	MSB 18-02-16-A	Revision to the Medical Assistance Rule concerning Stiripentol Coverage, Section 8.800.4.C.5. a	Revise	42 U.S.C. § 1396d(a)(12) ; 42 CFR § 440.120, 42 CFR § 447.502	The purpose of this rule is to expand coverage of Stiripentol, a drug used to treat Dravet Syndrome, a rare genetic dysfunction of the brain that results in seizures, to members over 20 years of age.	Health First Colorado members, providers.	A April 2018	B
April 2018	MSB 18-01-05-A	Revision to the Medical Assistance Rule concerning Hospice Benefit, Section 8.550	Revise	42 USC 1396d(o)	The proposed rule codifies existing practice by incorporating the policies documented in the Hospice Benefit	Health First Colorado members, providers.	A April 2018	B

					Coverage Standard, with no substantive policy changes.			
April 2018	MSB 18-01-16-A	Revision to the Medical Assistance Eligibility Rules Concerning Citizenship and Identity Documentation Requirements, Section 8.100.3.H	Revise	42 C.F.R. §435.407	Photocopies, facsimile, scanned, or other copies of citizenship and identity documents must now be accepted to the same extent as an original document, unless the copy submitted is inconsistent with other information available to the agency, or the agency otherwise has reason to question the validity of the information contained in the document.	Health First Colorado members, providers.	A April 2018	B
May 2018	MSB 18-02-01-A	Revision to the Medical Assistance Rule Concerning the Healthcare Affordability and Sustainability Fee Collection	Revise	42 CFR 433.68	Updates healthcare affordability and sustainability fee amounts and payments amounts in accordance with the CHASE Board's	Health First Colorado members, providers.	A May 2018	B

		and Disbursement, Section 8.3000			recommendations			
May 2018	MSB 17-09-22-B	Revision to the Medical Assistance DME Rule concerning Reimbursement, Section 8.590.7	Revise	Senate Bill 17-254	The proposed rule will increase the Durable Medical Equipment (DME) encounter rate by 1.402% to account for General Assembly funding appropriation, pursuant to SB17-254; and will bring the Department into compliance with the Consolidated Appropriations and the 21st Century Cures Act (Acts).	Health First Colorado members, providers.	A May 2018	B
May 2018	MSB 18-01-30-A	Revision to the Medical Assistance Special Financing Rule Concerning Colorado Dental Health Care Program for Low-Income Seniors,	Revise	25.5-3-404, C.R.S.	This rule change incorporates a change to restorative code, D2330; periodontics code D4355, prosthodontic (removable) codes D5621 and D5622; oral and	Health First Colorado members, providers.	A May 2018	B



		Section 8.960			maxillofacial surgery codes D7220, D7230, D7240, and D7241; and anesthesia codes, D9219, D9223 and D9243 and program payments into Appendix A			
May 2018	MSB 18-01-30-B	Revision to the Medical Assistance Rule concerning the FQHC Rule, Section 8.700	Revise	Section 1902(bb) of the Social Security Act	This rule revision contains multiple changes to current FQHC rules, including: adding new billable behavioral health provider types; revising out-stationing payment to FQHCs; changing the current Alternative Payment Methodology (APM) to reimburse different cost-based rates for physical health, dental, and specialty behavioral health services; and adding a quality	Health First Colorado members, providers.	A May 2018	B

					component to FQHC rates that will be effective July 1, 2020.			
May 2018	MSB 18-02-12-A	Revision to the Medical Assistance Rule Concerning Adding the Reasonable Compatibility Methodology to Non-MAGI Verification Requirements, Section 8.100.5.B.1.c	Revise	42 CFR 435.952	The purpose of this rule update is to further align Non-MAGI and MAGI eligibility verification policy by applying the Reasonable Compatibility to the Non-MAGI groups	Health First Colorado members, providers.	A May 2018	A
May 2018	MSB 18-02-12-B	Revision to the Medical Assistance Rule concerning Long-Term Care Institution Recipient Income - Other Deductions Reserved from the Recipient's Income, Section 8.100.7.V.3.g.ii	Revise	42 CFR 435.725	The purpose of changing the rule at 10 CCR 2505-10 § 8.100.7.V.3.g.ii is to increase Home Maintenance Allowance (HMA) which is an adjustment to patient liability for Medicaid recipients in a nursing facility	Health First Colorado members, providers.	A May 2018	A

May 2018	MSB 17-11-22-A	Revision to the Medical Assistance Rule concerning Outpatient Fee-for-Service SUD Providers Eligible Providers, Section 8.746.2	Revise	State Plan Amendment 17-0002; 42 CFR §440.130(d)	The proposed revisions to Section 8.746 will align the rule to changes made in the State Plan Amendment 17-0002	Health First Colorado members, providers.	A May 2018	B
May 2018	MSB 18-02-12-D	Revision to the Medical Assistance Rule concerning Update to the 340B Drug Discount in EAPGs and EAPG Rate Maintenance Methodology, Section 8.300.6	New rule	24-4-103(6); §25.5-4-402.4(5)(b)(I)	Increases payment to hospitals participating in the 340B Drug Discount Program by reducing the discount applied during the EAPG pricing calculation for 340B Drugs for outpatient hospital claims.	Health First Colorado members, providers.	A May 2018	B
June 2018	MSB 18-05-15-A	Revision to the Medical Assistance Rule concerning Durable Medical Equipment Reimbursement, Section 8.590.7	Revise	42 CFR 440.70, 440.120	The proposed rule will increase the Durable Medical Equipment (DME) rate by 1.0% to account for General Assembly funding appropriation, pursuant to HB 18-1322	Health First Colorado members, providers.	A June 2018	B

June 2018	MSB 18-03-01-B	Revision to the Medical Assistance Rule concerning the Pharmacy Prior Authorization Timeline, Section 8.800.7.B	Revise	Section 1927(d)(2) of the Social Security Act	The requirements of this section create an unrealistic timeline for prescribers and Department staff to process pharmaceutical prior-authorization requests that require additional information	Health First Colorado members, providers.	A June 2018	B
June 2018	MSB 18-02-01-A	Revision to the Healthcare Affordability and Sustainability Fee Collection and Disbursement, Section 8.3000	Revise	42 CFR 433.68	Updates healthcare affordability and sustainability fee amounts and payments amounts in accordance with the CHASE Board's recommendations	Health First Colorado members, providers.	A June 2018	B
July 2018	MSB 18-03-01-A	Revision to the Medical Assistance Rule concerning Special Connections Reimbursement, Section 8.745	Revise	45 CFR 96.131; 42 CFR 440.250 and 42 CFR 435.170	Updating the interChange system to allow for a specialty provider type that we can reimburse directly. We will remove the Office of Behavioral Health as the only provider whom we can	Health First Colorado members, providers.	A July 2018	B

					reimburse and allow direct provider reimbursement			
July 2018	MSB 18-04-04-A	Revision to the Medical Assistance Rule concerning CICP State Administered Audits, Section 8.902.D	Revise	25.5-3-101 through 25.5-3-111 C.R.S.	Create a State administered audit of our CICP providers	Health First Colorado members, providers.	A July 2018	B
July 2018	MSB 18-04-05-B	Revision to the Medical Assistance Rule concerning the Family Support Services Loan Fund-Rescind, Section 8.613.1	Repeal	House Bill 17-1078	The statute authorizing the Family Support (FS) Loan Fund, Section 25.5-10-401-403, C.R.S. was repealed pursuant to HB17-1078	Health First Colorado members, providers.	A July 2018	B
July 2018	MSB 18-05-15-A	Revision to the Medical Assistance Rule concerning Durable Medical Equipment Reimbursement, Section 8.590.7	Revise	42 CFR 440.70, 440.120	The proposed rule will increase the Durable Medical Equipment (DME) rate by 1.0% to account for General Assembly funding appropriation, pursuant to HB 18-1322	Health First Colorado members, providers.	A July 2018	B

August 2018	MSB 18-04-05-A	Revision to the Medical Assistance Rule concerning Children with Autism - Rescind, Section 8.519	Repeal	Social Security Act § 1902 / 42 U.S.C. §1396a; Social Security Act § 1915(c) / 42 U.S.C. § 1396n(c)	With the addition of Pediatric Behavioral Therapies to EPSDT the CWA waiver will be closed. The only benefit this waiver offered was behavioral therapy	Health First Colorado members, providers.	A August 2018	B
August 2018	MSB 18-05-25-B	Revision to the Medical Assistance Home and Community Based Services for Elderly Blind and Disabled Rule Concerning Alternative Care Facilities Section 8.495	Revise	25.5-6-313(1) C.R.S.	The intention of this rule is to ensure providers meet both State and Federal guidelines for critical incident reporting, care planning, and the HCBS Final Settings Rule	Health First Colorado members, providers.	A August 2018	B
August 2018	MSB 18-06-15-A	Revision to the Medical Assistance Rule concerning Adding Provider Types to FQHC Visit, Section 8.700	Revise	42 USC 1396a(bb)	The rule changes the definition of a payable encounter at Federally Qualified Health Centers. The amended rule adds the supervised mental health license	Health First Colorado members, providers.	A August 2018	B

					candidates to the provider types that can generate a billable encounter			
August 2018	MSB 18-07-23-B	Revision to the Medical Assistance Rule concerning Drug Payment Methodology for Outpatient Hospitals, Section 8.300.1 and 8.300.6	Revise	2 U.S.C. 1396a(a)(30)(A); 42 C.F.R. 447.321	The proposed rule update will allow for certain specialty drugs to be reimbursed at rates in greater alignment with hospital cost experience and maintain existing levels of access to care	Health First Colorado members, providers.	A August 2018	B
September 2018	MSB 18-01-25-A	Revision to the Medical Assistance Long-Term Services and Supports HCBS Benefit Rule Concerning Adult Day Services, Section 8.491	Revise	42 U.S.C. §1396n(c)	Correct grammatical and technical errors identified as a part of the 2016 Rule Efficiency Review process. Additionally, the proposed changes align the definitions of the CHCBS and CLLI waivers with the definitions in the Single Entry Point rules at 8.393	Health First Colorado members, providers.	A September 2018	B

September 2018	MSB 18-02-09-A	Revision to the Medical Assistance Rule concerning Adding Pharmacist as a Provider Type, Section 8.200.2	Revise	C.R.S. 25.5-5-202(1)(a)(I) and (3)	Allow the Department to address the inefficiency in its operations and reduce the amount of duplicative correspondence sent to providers.	Health First Colorado members, providers.	A September 2018	
September 2018	MSB 18-06-20-B	Revision to the Medical Assistance Rule concerning Immunization Benefits, Section 8.815	Revise	42 CFR 457.1210	Align with current business practice	Health First Colorado members, providers.	A September 2018	B
September 2018	MSB 18-03-07-A	Revision to the Medical Assistance Rule concerning Pharmacist Over the Counter Prescriptive Authority, Section 8.800	New rule	42 CFR 433.68	To comply with the new state law and to comply with the State Plan with the Centers for Medicare and Medicaid Services, the CHASE must establish rules on an emergency basis in order to assess fees on hospitals to ensure continuing health care coverage for these Medicaid and CHP+	Health First Colorado members, providers.	A September 2018	B



					members and to make required payments to hospitals. Senate Bill 17-267 repealed the Hospital Provider Fee program effective July 1, 2017.			
September 2018	MSB 18-06-12-A	Revisions to Medical Assistance Rule concerning Income Verification for Those Receiving Continuous Coverage, Sections 8.100.3.G and 8.100.4.G	Revise	42 U.S.C. §1396n(c)	Incorporate the Department created Age Appropriate Guidelines document into the rules concerning Long Term Care eligibility	Health First Colorado members, providers.	A September 2018	A
September 2018	MSB 18-05-15-B	Revisions to Child Health Plan Plus Rule concerning Income Verification for Those Receiving Continuous Coverage, Section 430	Revise	42 U.S.C. §1396n(c)	Incorporate the Department created Age Appropriate Guidelines document into the rules concerning Long Term Care eligibility	Health First Colorado members, providers.	A September 2018	B
October 2018	MSB 18-07-13-A	Revision to the Medical Assistance Rule	Revise	42 C.F.R. §435.912	The proposed rule change will amend 10 CCR 2505-10	Health First Colorado members, providers.	A October 2018	A

		Concerning Redetermination of Eligibility and Transferring Requirements, Section 8.100.3			8.100.3.C and 8.100.3.P to remove incorrect references.			
October 2018	MSB 18-07-23-B	Revision to the Medical Assistance Rule concerning Drug payment Methodology for Outpatient Hospitals, Section 8.300	Revise	2 U.S.C. 1396a(a)(30)(A); 42 C.F.R. 447.321	The proposed rule update will allow for certain specialty drugs to be reimbursed at rates in greater alignment with hospital cost experience and maintain existing levels of access to care	Health First Colorado members, providers.	A October 2018	B
October 2018	MSB 18-02-09-B	Revision to the Medical Assistance Rule Concerning Community Clinic and Community Clinic and Emergency Center, Section 8.320	Revise	42 USC 1396a(a)(32)(A) / 42 CFR 447.321	The rule will add a Community Clinic and Community Clinic and Emergency Center (CC/CCEC) provider type eligible to be reimbursed for services to Health First Colorado clients.	Health First Colorado members, providers.	A October 2018	B

August	10 CCR 2502-10 8.400	Long Term Care	Revise	C.R.S. 25.5-6-101 – C.R.S. 25.5-6-1501	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2502-10 8.401	Level of Care Screening Guidelines	Revise	C.R.S. 25.5-6-104	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10 8.402	Admission Procedures for Long Term Care	Revise	C.R.S. 25.5-6-105	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.403	Long Term Care - Services to the Developmentally Disabled	Revise	C.R.S. 25.5-6-409	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.404	Admission Criteria: Programs for the Developmentally Disabled	Revise	C.R.S. 25.5-6-404	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.405	Admission Procedures: Programs for the Developmentally Disabled	Revise	C.R.S. 25.5-6-404	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.406	Nursing Facility Care - Levels of Care	Revise	C.R.S. 25.5-6-104	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10,	Special Provision Concerning	Revise	C.R.S. 25.5-6-206	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B

	Section 8.407	Clients Eligible for Social Security Age-72 Benefits (Prouty)						
August	10 CCR 2505-10, Section 8.408	Levels of Care Defined - Skilled Nursing Care	Remain as is	C.R.S. 25.5-6-104	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.409	Levels of Care Defined - Intermediate Nursing Care	Remain as is	C.R.S. 25.5-6-104	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.415	Role of Counties and Nursing Facilities	Remain as is	C.R.S. 25.5-6-202	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.420	Requirements and Provisions for Participation by Colorado Nursing Facilities	Remain as is	C.R.S. 25.5-6-202	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.421	Responsibility of County Department Concerning Participation	Remain as is	C.R.S. 25.5-6-202	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10,	Visits to Recipients by Social	Remain as is	C.R.S. 25.5-11.5-105	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B

	Section 8.422	Services Personnel, Privacy for Conferences with Recipients						
August	10 CCR 2505-10, Section 8.423	Visits to Recipients by the Colorado Long Term Care Ombudsman and Designated Representatives	Remain as is	C.R.S. 25.5-11.5-105	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.424	Periodic Visits - Nursing Home Records to be Made Available	Revise	C.R.S. 25-25-107	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.430	Medicaid Certification of New Nursing Facilities or Additional Beds	Revise	C.R.S. 25.5-6-202	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.435	Enforcement Remedies	Revise	C.R.S. 25.5-6-205	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.440	Nursing Facility Benefits	Revise	C.R.S. 25.5-6-201	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B

August	10 CCR 2505-10, Section 8.441	Nursing Facility Cost Reporting	Revise	C.R.S. 25.5-6-202	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.442	Submission of Cost Reporting Information	Revise	C.R.S. 25.5-6-202	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.443	Nursing Facility Reimbursement	Revise	C.R.S. 25.5-6-202	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.470	Hospital Back Up Level of Care	Revise	C.R.S. 25.5-6-203	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.482	Resident Income and Possessions	Revise	C.R.S. 25.5-6-206	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.482.34	The "Status of Nursing Facility Care" Form, Ap-5615	Revise	C.R.S. 25.5-6-202	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.482.4	No Duplicate or Additional Payments	Revise	C.R.S. 25.5-6-202	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.482.42	Additional Payments	Revise	C.R.S. 25.5-6-202	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.482.5	Resident's Personal Needs Funds	Revise	C.R.S. 25.5-6-206	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10,	Patient's Personal Possessions	Revise	C.R.S. 25.5-6-206	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B

	Section 8.482.6							
August	10 CCR 2505-10, Section 8.482.7	Nursing Facility Responsibility for Establishing Personal Needs Account	Revise	C.R.S. 25.5-6-206	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.485	Home and Community Based Services for the Elderly, Blind and Disabled (HCBS-EBD) General Provisions	Revise	C.R.S. 25.5-6-302	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.485.90	State Prior Authorization of Services	Remain as is	C.R.S. 25.5-6-305	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.485.200	Limitations on Payment to Family	Remain as is	C.R.S. 25.5-6-310	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.485.300	Client Rights	Revise	C.R.S. 25.5-6-311	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.486	HCBS-EBD Case Management Functions	Remain as is	C.R.S. 25.5-6-311	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.487	HCBS-EBD Provider Agencies	Revise	C.R.S. 25.5-6-311	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B

August	10 CCR 2505-10, Section 8.488	Electronic Monitoring	Remain as is	C.R.S. 25.5-6-307	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.489	Personal Care	Revise	C.R.S. 25.5-6-307	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.490	Homemaker Services	Revise	C.R.S. 25.5-6-307	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.491	Adult Day Services	Revise	C.R.S. 25.5-6-307	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.492	Respite Care	Revise	C.R.S. 25.5-6-307	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.493	Home Modification	Remain as is	C.R.S. 25.5-6-307	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.494	Non-Medical Transportation	Remain as is	C.R.S. 25.5-6-307	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.495	Alternative Care Facilities [Eff.03/30/2009]	Revise	C.R.S. 25.5-6-307	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B
August	10 CCR 2505-10, Section 8.496	Home and Community Based Services for Persons Living with Aids (HCBS-PLWA)		C.R.S. 25.5-6-307	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B



		General Provisions						
August	10 CCR 2505-10, Section 8.497	Program for All-Inclusive Care for The Elderly (PACE)	Revise	C.R.S. 25.5-5-412	Regulatory Efficiency Review	Health First Colorado members, providers.	Pending	B

2019

Regulatory Agenda

January 1, 2019-December 31, 2019



**COLORADO**  
Department of Health Care  
Policy & Financing

## Overview

The Colorado Department of Health Care Policy and Financing submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in Colo. Rev. Stat. §2-7-203(4). Pursuant to state law, annually on November 1 executive-branch agencies must file a Departmental Regulatory Agenda (DRA) containing:

- A list of new rules or amendments that the department or its divisions expect to propose in the next calendar year;
- The statutory or other basis for adoption of the proposed rules;
- The purpose of the proposed rules;
- The contemplated schedule for adoption of the rules;
- An identification and listing of persons or parties that may be affected positively or negatively by the rules; and

The Regulatory Agenda also includes, pursuant to Colo. Rev. Stat. §24-4-103.3, rules to be reviewed as part of the Department’s “Regulatory Efficiencies Reviews” during 2017 (which are denoted as such in the “purpose” column). The DRA is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on the department’s web site, and submitted to the Secretary of State for publication in the Colorado Register. Each department must also present its DRA as part of its “SMART Act” hearing and presentation pursuant to Colo. Rev. Stat. §2-7-203(2)(a)(III)(A).

The following constitutes Department of Health Care Policy and Financing’s Regulatory Agenda for 2018-2019 and is provided in accordance with Colo. Rev. Stat. §24-7-203(2)(a)(IV):

Schedule	Rule Number	Rule Title	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders <i>Consider including high-level outreach bullets</i>
Anticipated Hearing or Adoption Date			If only a part of a CCR is repealed, it should be classified as “revised”	Statutory authority		Categories of stakeholders, not individual stakeholders

July 2019	10 CCR 2505-10,	BH Capitation Program/MCO Rule - needs to be changed to a broader ACC rule Second Level Grievance Process		ACC Statute to administer the ACC	Update to reflect current ACC integration of Behavioral Health grievance: 8.209.5.H. If the member is dissatisfied with the disposition of a Grievance provided by the MCO, PHIP, or PAHP, the member may bring the unresolved Grievance to the Department. 1. The Department will acknowledge receipt of the Grievance and dispose of the issue. 2. The disposition offered by the Department will be final	Regional Accountable Entities (RAEs), Members, Advocates, Providers
Spring 2019	10 CCR 2505-10, Section 8.075	Client Over-Utilization Program	Revision	42 CFR 456.3 and 431.54(e)	Update parameters regarding placement into the program on a quarterly basis to reflect current program design and policy changes to the lock-in portion of the program	Regional Accountable Entities, Members, Advocates, Providers

July 2019	10 CCR 2505-10, Section 8.205	Medicaid Managed Care Program	Revision	42 CFR Section 438 CRS 25.5 Article 5 Part 4	<p>Update/rework rule to comply with federal requirements, revised state statute, and align with changes to the Accountable Care Collaborative program.</p> <p>Update to reflect current ACC integration of Behavioral Health grievance: 8.209.5.H. If the member is dissatisfied with the disposition of a Grievance provided by the MCO, PHIP, or PAHP, the member may bring the unresolved Grievance to the Department. 1. The Department will acknowledge receipt of the Grievance and dispose of the issue. 2. The disposition offered by the Department will be final</p>	Regional Accountable Entities (RAEs), Members, Advocates, Providers
-----------	-------------------------------	-------------------------------	----------	---	---	---

Early 2019	10 CCR 2505-10, Section	Transportation - Supplemental Payment for Public Ambulance Services	Revision	State Plan (pending approval)	Supplemental payment to Public EMS providers for costs associated with providing services above the FFS rates under a certified public expenditure methodology.	Public EMS providers - anticipated impact is positive
Early 2019	10 CCR 2505-10, Section	Reimbursement for Outstationing Administrative Costs	Revision	PACAP (pending approval)	Update language to correspond with updated PACAP language and new payment methodology	Denver Health Medical Center Medical Assistance Sites - anticipated impact is positive
Early 2019	10 CCR 2505-10, Section 8.700.8	Nursing Home interChange & Supplemental Payment Reimbursement Methodology	Revision	Provider Fee Advisory Board (PFAB), State Plan	Revises language for calculation of Cost Base Rate, interChange Rate, & Rate True-Up Supplemental Payment	Nursing Homes - anticipated impact is positive
Early 2019	10 CCR 2505-10, Section 8.3000	Colorado Healthcare Affordability & Sustainability Enterprise (CHASE) Fees & Payments	Revision	CHASE Board, State Plan	Revises language for FFY 18-19 CHASE Fee Model	Hospitals - Anticipated impact is positive
Early 2019	10 CCR 2505-10, Section 8.960	The Dental Health Care Program for Low-Income Seniors	Revision	DAC, State Plan	Any changes in the newly published 2019 American Dental Assoc. Procedure code book will need to be updated in Appendix A.	Grantees - Anticipated impact is positive.
March- May 2019	10 CCR 2505-10,	Children's Habilitation	Revision	HB 18-1328	Revise CHRP waiver rules to	Children/youth with complex behavioral support needs and their families will be

	Section 8.508	Residential Program (CHRP) waiver			incorporate revisions authorized by HB 18-1328 to remove child welfare requirement, add additional crisis stabilization services.	affect positively. Changes expand eligibility for CHRP waiver services, will no longer require parents to relinquish custody of child to receive needed services, and will add services designed to support the child/youth to remain in the family home.
March-May 2019	10 CCR 2505-10, Section 8.760	Targeted Case Management Services	Revision	HB 18-1328	Revise Targeted Case Management rules to include that Targeted Case Management is provided for participants enrolled in the CHRP waiver	Case management agencies- increase in caseload. Waiver participants/families- anticipating positive impact with the delivery of case management specialized for people with intellectual and developmental disabilities.
May-July 2019	10 CCR 2505-10, Section 8.500.5	Supported Employment Rule	Revision	SB18-145	Update Supported Employment Rules to include new training requirements for providers and to require Case Managers to collect new data around employment.	Individuals utilizing Supported Employment Services will have access to better qualified staff that supports them in Job Development and on the job supports. Supported Employment Providers, and Case managers.
May- July 2019	10 CCR 2505-10	State SLS program	New rule	State SLS is funds that are carved out of the SLS budget in the Long Bill, that historically was intended to be used to support individuals that where on the SLS waiting list. There	To ensure the State SLS allocation is properly used to support individuals either trying to become eligible for a waiver or to support individuals in a	This will support individuals who have not yet be determined eligible for either the SLS or DD waiver to get the supports and services they need while the eligibility process is being completed. It may also be determined that some of the funds can be used to support individuals that are in crisis to ensure they have those extra supports to remain in the least restrictive environment and as independent in the community. This will also

				are no regulation or statute dictating what these funds are used for.	crisis to remain in the less restrictive and most integrated setting possible	support CCBs and Case Managers with rules on what is an appropriate use of this program
End of 2019	10 CCR 2505-10, Section 8.516.30	Transitional Living Program (TLP)	Revision	42 USC § 1396n	Complete overhaul of TLP service to address existing access to care issues. This will be paired with a change in rate methodology.	People who have recently sustained a BI aren't currently able to access this service due to unclear regulation and low reimbursement leading to a lack of providers. This rule revision will improve the lives of people with recent BI by reducing hospital readmissions and other negative outcomes.
End of 2019	10 CCR 2505-10, Section 8.500.94	Home Accessibility Adaptations Rule Revision for SLS Waiver	Revision	42 USC § 1396n	Clarification of service regulations that were previously provided through informal guidance.	By eliminating multiple versions of past informal guidance that are followed differently across the state, people accessing this benefit, case managers, providers, and state staff will benefit from clearer regulations so that the benefit access and administration will be more predictable and consistent.
End of 2019	10 CCR 2505-10, Section 8.503.40.A.5	HCBS-CES Waiver Services	Revision	Title 1915 (c) federal "Social Security Act"	Clarification of service regulations that were previously provided through informal guidance.	By eliminating multiple versions of past informal guidance that are followed differently across the state, people accessing this benefit, case managers, providers, and state staff will benefit from clearer regulations so that the benefit access and administration will be more predictable and consistent.
Tentatively have rule effective late 2019 after appropriate stakeholder	10 CCR 2505-10, Section 8.503	Children's Extensive Supports Waiver Program (CES)	Revision	Title 1915 (c) federal "Social Security Act"	Revisions that will affect multiple sections of the rule to include removal of outdated language, expired citation	Revisions will positively affect stakeholders involved. The community will benefit from appropriate language updates that follow the Department's commitment to person centeredness. Operationalization of services technically available to members, but not yet used because of lack of rules to support implementation. Members, providers and



engagement on sections.					references, addition of youth day services (approved waiver service, but not outlined in rule), updating provider qualifications for services including but not limited to behavioral services and professional services	case management will benefit from updated and more clearly defined provider qualifications. More engaged provided community as they will be involved with provider qualifications discussion and can act as advisors to the Dept.
Tentatively have rule effective late 2019 after appropriate stakeholder engagement on sections.	10 CCR 2505-10, Section 8.517	Spinal Cord Injury Waiver Program (SCI)	Revision	42 U.S.C. Section 1915 (c)	Revisions that will affect multiple sections of the rule to include updated provider qualifications, updated language, and removal Medical Director	Revisions will positively affect stakeholders involved. The community will benefit from appropriate language updates, the removal of non-applicable sections of the rule (Medical Director) and updated provider quals. The updated provider quals should assist in allowing for more qualified providers to provide this service to waiver members, while giving members more options in providers.
Rule effective 6/30/2019	10 CCR 2505-10, Section 8.510	Consumer Directed Attendant Support Services (CDASS)	Revision	42 U.S.C. §1396n(c)	Revisions that will affect multiple sections of the rule to include streamlined roles and responsibilities of participants and/or their authorized representatives. Rule also clarifies service limitations and allowable health maintenance tasks	Stakeholders will benefit from clarity to roles and responsibilities within the rule. Implementing change to allowable service spending per month to reduce risk of prematurely depleting a service budget

Rule effective 06/30/2019	10 CCR 2505-10, Section 8.552	In-Home Support Services	Revision	25.5-6-1203 through 25.5-6-1205, C.R.S.	Revisions that will include mandatory provider training per commitment to MSB on 03/09/2018. Revisions to add clarification to services authorized in IHSS, including removing link to personal care rule. May include EVV language if available	Stakeholders requested mandatory provider training and providers are supportive of this addition. Stakeholders will benefit from clarity in service / task definitions that are presently misinterpreted
March - May 2019	10 CCR 2505-10, Section	Wage Pass Through Rule	New rule	HB 18-1407	Add a rule governing the application of the 6.5% wage pass through as required by HB 18-1407. This statute requires the Department to operationalize and audit a wage pass through of 6.5% for direct support professionals delivering services through the home and community waiver serving persons with developmental disabilities (DD), supported living services (SLS), and children extensive supports waivers (CES).	Stakeholders will benefit from the increase of funding as a wage pass through to help stabilize the direct support workforce

March-May 2019	10 CCR 2505-10, Section 8.470	Hospital Back Up Level of Care	Revision	42 CFR part 483, subpart B  25.5-6-201 through 203, C.R.S.	Rates is implementing a new rate methodology based upon the MDS. We have corresponding operational processes and policy changes to align with the regulatory changes	Stakeholders have been advised of the upcoming process changes due to work currently being conducted by Rates. If we decide to open up eligibility criteria, we expect considerable stakeholder outreach to ensure buy-in.
March-May 2019	10 CCR 2505-10, Section 8.443	ICF Oversight	New rule	42 CFR sections 456.380; 483.440 and 456.431-438	HCPF is currently working with multiple state agencies that either administer, operate, or survey the State's ICF programs without HCPF oversight. Work is currently ongoing in establishing points of oversight which will need to be reflected in rule, section 8.4.	Stakeholders include residents of ICFs, CCBs, CDHS, CDPHE, CMS, and a private operator.
January-February 2019	10 CCR 2505-10, Section 8.482	Post Eligibility Treatment of Income (PETI)	Revision	§1902(r)(1)(A) of the Social Security Act, 42 CFR § 435.832	Due to incorporation of Telligen as UR/UM for OCL, a number of operational processes have been assigned to the SURC. Some current provisions under this section need to be	Stakeholders include residents of SNFs and providers.

					updated to reflect this.	
June 1, 2019	10 CCR 2505-10, Section 8.500.7.F	Access to Services through DD waiver emergency enrollment criteria	Revision	HB 18-1407	Establish additional criteria for reserve capacity enrollments based on the age and capacity of a person's parent or caregiver	Individuals with intellectual and developmental disability who have an aging caregiver, lost a parent or caregiver, have a caregiver with a life threatening illness or have a caregiver who has placed a person's health and safety at risk will gain access to HCBS-DD waiver services as an exception to the waiting list protocol
Mid 2019	10 CCR 2505-10	Choice Entity for choice in Case Management Agency	New rule	HB 17-1343	Establish a third-party entity to assist individuals in choice of their Case Management Agency.	Individuals with intellectual and developmental disability who are currently receiving both case management services and provider services from the same agency. This will also include newly functionally and financially eligible individuals who are receiving HCBS services from the following waivers; DD, CES and SLS
Mid 2019	10 CCR 2505-10, Section 8.393	Functions of a Single Entry Point Agency	Revision	24-4-103.3(4) C.R.S.	Review and clean up language and citations within the current regulations. Also to ensure that all regulations have aligned definitions. Review current processes and align with person centered practices and choice.	This will affect CCBs/SEPs/CMAs. This will provide updates to all the listed regulations to ensure fluidity between the regulations. The definitions, citations and specific language will need to be reviewed and updated as appropriate.
Mid 2019	10 CCR 2505-10, Section 8.500	Home and Community Based Services for the Developmentally Disabled	Revision	24-4-103.3(4) C.R.S.	Review and clean up language and citations within the current regulations. Also to ensure that all	This will affect CCBs/SEPs/CMAs. This will provide updates to all the listed regulations to ensure fluidity between the regulations. The definitions, citations and specific language will need to be reviewed and updated as appropriate.

		(HCB-DD) Waiver			regulations have aligned definitions. Review current processes and align with person centered practices and choice.	
Mid 2019	10 CCR 2505-10, Section 8.600	Services for Individuals with Intellectual and Developmental Disabilities	Revision	24-4-103.3(4) C.R.S.	Review and clean up language and citations within the current regulations. Also to ensure that all regulations have aligned definitions. Review current processes and align with person centered practices and choice.	This will affect CCBs/SEPs/CMAs. This will provide updates to all the listed regulations to ensure fluidity between the regulations. The definitions, citations and specific language will need to be reviewed and updated as appropriate.
Mid 2019	10 CCR 2505-10, Section 8.761	Targeted Case Management Services for Persons with Developmental Disabilities	Revision	24-4-103.3(4) C.R.S.	Review and clean up language and citations within the current regulations. Also to ensure that all regulations have aligned definitions. Review current processes and align with person centered practices and choice.	This will affect CCBs/SEPs/CMAs. This will provide updates to all the listed regulations to ensure fluidity between the regulations. The definitions, citations and specific language will need to be reviewed and updated as appropriate.
April 2019	10 CCR 2505-10, Section 8.076	Program Integrity	Revision	25.5-4-301, C.R.S.	Revise rule language for clarity and to incorporate new and revised	Medicaid and CHP+ Providers

					provisions of 25.5-4-301, C.R.S.	
April 2019	10 CCR 2505-10, Section 8.050	Provider Appeals	Revision	24-4-105, C.R.S.	Revise rule language for clarity.	Medicaid and CHP+ Providers
February 2019	10 CCR 2505-5, 1.030	State Investigative Rules	Revision	C.R.S. 25.5-1-108; C.R.S. 25.5-1-115	Addition to Executive Director rules to give state investigators tools to investigate, such as subpoena power	Ineligible members
Mid 2019	10 CCR 2505-10, Section 8.485	Home and Community Based Services for the Elderly, Blind and Disabled (HCBS-EBD)	Revision	SB 18-093	Repeal of Obsolete provisions relating to the inactive Persons Living with AIDS waiver	Repeal of obsolete language
Early 2019	10 CCR 2505-10, Section 8.553	Transition Services	Revision	42 U.S.C. §1396n(c) and The Social Security Act, §1915(c).  Olmstead v. L.C., 527 U.S. 581 (1999)	Revisions to the transition services rule	Medicaid recipients who are eligible for Home and Community Based Services, reside in a nursing home, Intermediate Care Facility for Individuals with Intellectual and Developmental Disabilities (ICF-ID), or Regional Center, and are willing to participate and have expressed interest in moving to a home and community-based setting.
Early 2019	10 CCR 2505-5, 1.200	All-Payers Claims Database	Revision	Section 25.5-1-108, C.R.S.	Revisions to the All Payers Claims Database	HCPF providers and members
Mid 2019	10 CCR 2505-10, Section 8.079	Quality Improvement	Revision	24-4-103 C.R.S.	Make modifications to include “PCCM and PCCM Entities.”	HCPF providers and members
March 2019	10 CCR 2505-10,	Verified Lawful Presence	Revision	42 CFR 435.956	The purpose of this rule change would to align the	This change will affect any medical assistance applicant and/or member that requires their lawful presence to be verified

	Section 8.100.3.G				steps taken to verify lawful presence and mirror the process established by Homeland Security	
December 2019	10 CCR 2505-10, Section 8.100.4.C	allowable deductions for MAGI programs	Revision	42 CFR 435.603	The purpose of this rule change is to align with federal tax changes for MAGI rules for allowable deductions.	This change will affect MAGI Medical assistance programs for individuals who have allowable deductions.
December 2019	10 CCR 2505-10, Section 8.100.4.I	4-month extension program who receive Alimony Income.	Revision	42 CFR 435.603	The purpose if this rule change is to align with federal tax changes for MAGI rules for those who receive Alimony.	This change will affect MAGI Medical Assistance programs for individuals who receive Alimony.
Early 2019	10 CCR 2505-10, Section 8.100.7.E.6. c	Consideration of Trusts in Determining Medical Assistance Eligibility	Revision	42 U.S.C 1396p(d)(4)(A)	Amend the subsection addressing pooled trusts to clarify how the Department treats additions	Pooled trust organizations. Recipients applying for or receiving long term care services and supports or other Medicaid programs imposing a resource requirement.
Mid 2019	10 CCR 2505-10, Section 8.063, 8.482.52.F	Medical Assistance Estate Recovery	Revision	42 U.S.C 1396p	Clarify when and under what circumstances, the Department will file a lien on a home. Clarify disposition of personal needs funds for estate recovery purposes.	Recipients applying for or receiving long term care services and supports or other Medicaid programs imposing a resource requirement.

## **Departmental Regulatory Agendas**

### **Department**

Department of Law



CYNTHIA H. COFFMAN  
Attorney General  
MELANIE J. SNYDER  
Chief Deputy Attorney General  
LEORA JOSEPH  
Chief of Staff



**STATE OF COLORADO  
DEPARTMENT OF LAW**

RALPH L. CARR  
COLORADO JUDICIAL CENTER  
1300 Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000

**Office of the Attorney General**

**DEPARTMENT OF LAW REGULATORY AGENDA FOR  
CALENDAR YEAR 2019**

This document contains the Colorado Department of Law's regulatory agenda for calendar year 2019 submitted pursuant to C.R.S. §2-7-203(2)(a)(IV).

**List of New Rules or Revisions to Existing Rules Expected to Be Proposed in CY 2019**

**1. Peace Officers Standards and Training (P.O.S.T.)**

**Proposed Rules**

**Rule 1:**

- a. Amending Rule 1-Definitions, changing the effective date of Rule 1 to January 30, 2019.
- b. Amending Rule 1(f) and (s) to specify "approved" training academies.
- c. Amending Rule 1(l) to clarify definition of Convictions to include deferred judgment and sentencing agreement, deferred prosecution agreement, or pretrial diversion agreement, whether pending or successfully completed.
- d. Deleting Rule 1(o) to eliminate Dimlight definition.
- e. Amending Rule 1(t) to add definition of Incident.
- f. Amending Rule 1(z) to specify Part 1 of § 16-2.5 C.R.S.
- g. Amending Rule 1(rr) to clarify assessment requirements

**Rule 8:**

- a. Amending Rule 8-Process for Seeking Exemption from Statutory Certification Restrictions, changing effective date to January 30, 2019.
- b. Deleting reference to POST fingerprint card in Rule 8(b), as prints may be submitted electronically effective September 24, 2018.

**Rule 9:**

- a. Amending Rule 9-Revocation Hearings for Criminal Conduct, changing effective date to January 30, 2019.
- b. Amending Rule 9(b) to include other decertifying actions with convictions.

**Rule 10:**

- a. Amending Rule 10, Basic Peace Officer Certification, changing effective date to January 30, 2019.
- b. Amending Rule 10(a)(I) to include college transcripts or degrees as evidence of successful completion of high school.
- c. Amending Rule 10(1)(V) to remove specific form name of military discharge documents as there are multiple acceptable documents.
- d. Amending Rule 10(1)(VI) to specify requirement to complete an additional Basic academy if certification is not issued within two years of academy completion.

**Rule 11:**

- a. Amending Rule 11-Provisional Certification, changing the effective date to January 30, 2019.
- b. Amending Rule 11(a)(I), to include college transcripts or degrees as evidence of successful completion of high school.
- c. Amending Rule 11(a)(V) to require submission of military discharge documents when applicable.
- d. Adding Rule 11(a)(VII) to specify deadline by which Provisional certification must be issued.
- e. Amending Rule 11(d)(III) to clarify testing to include skills and written exams with SME committee members or POST-approved designees.
- f. Amending Rule 11(e) to specify deadline by which applicant must complete mandated training pursuant to § 24-31-315 CRS.
- g. Amending Rule 11(g) changing “petition” to submit a variance request to coordinate terminology in all rules.

**Rule 12:**

- a. Amending Rule 12-Reserve Certification, changing the effective date to January 30, 2019.
- b. Amending Rule 11(a)(I), to include college transcripts or degrees as evidence of successful completion of high school.
- c. Amending Rule 10(1)(V) to remove specific form name of military discharge documents as there are multiple acceptable documents.
- d. Amending Rule 10(1)(VI) to specify requirement to complete an additional Reserve academy if certification is not issued within two years of academy completion.

**Rule 13:**

- a. Amending Rule 13-Renewal of Basic Certification, changing effective date to January 30, 2019.
- b. Amending Rule 13(f)(III) to clarify testing to include skills and written exams with SME committee members or POST-approved designees.
- c. Deleting Rule 13 (f)(IV) referencing remedial training for skills exams.

**Rule 14:**

- a. Amending Rule 14- Fingerprint-Based Criminal History Record Check, changing effective date to January 30, 2019.
- b. Amending Rule 14 (a)(I), (d)(II), (d)(III), (d)(IV), (d)(V), (e)(I), (f)(II) to include language regarding use of CBI-authorized vendors for fingerprinting.

**Rule 19:**

- a. Amending Rule 19-Vehicle Identification Number Inspectors, changing effective date to January 30, 2019.
- b. Eliminate Rule 19(c) requiring a fee of \$25.00 for VIN inspector certification.

**Rule 24:**

- a. Amending Rule 24-Skills Training Safety and Skills Program Requirements for Basic and Reserve Academies, changing effective date to January 30, 2019.
- b. Amending Rule 24(d)(V) to include timing for dimlight live-fire shooting.

**Rule 27:**

- a. Remove text of Rule 27, leaving only title and repeal date.

**Rule 28:**

- a. Amending Rule 28-In-Service Training Program, changing effective date to January 30, 2018.
- b. Amending Rule 28(d)(III) to specify that firearms qualification does not meet mandated training requirement.
- c. Amending Rule 28(e) to specify entry of in-service training for all officers employed by an agency at any time, and encouraging entry of training throughout calendar year.
- d. Amending Rule 28(e)(I)(B) clarifying pro-rated training requirements.
- e. Amending Rule 28(e)(I)(E) adding waiver requirement for officers on administrative leave.
- f. Amending Rule 28(e)(II)(C) specifying conditions under which POST may declare an agency noncompliant after final report.

**List of New Rules or Revisions to Existing Rules Proposed and Submitted in CY 2018**

A regulatory agenda was not submitted for CY 2018. Below are rule changes that were approved and submitted for CY 2018.

**Rule 1:**

- a. Amending Rule 1-Definitions, changing the effective date of Rule 1 to April 30, 2018.
- b. Amending Rule 1(l) to more clearly define “Conviction” as it pertains to denial or revocation of POST Certification.

**Rule 8:**

- a. Amending Rule 8- Appeal Process for Peace Officer Applicants - Certification Denial as a Result of a Misdemeanor Conviction, changing the effective date of Rule 8 to April 30, 2018.
- b. Changing Rule 8 title to Process for Seeking Exemption from Statutory Certification Restrictions.
- c. Amending Rule 8(a), (b), (c) and (c)(III), to comply with state law regarding denial of certification to individuals who entered into deferred judgment and sentencing, deferred prosecution, or pretrial diversion agreements on the crimes described in § 305(1.5)(a) if the POST Board determines that

certification is not in the public interest; and to set forth procedures for applicants to seek exemption from or appeal denials of certification based upon convictions of the agreements described above.

- d. Amending Rule 8(f), clarifying the appeals process.

**Rule 9:**

- a. Amending Rule 9- Revocation Hearings for Criminal Conduct, changing the effective date of Rule 9 to April 30, 2018.
- b. Changing Rule 9 title to Revocation Hearings.
- c. Amending Rule 9(a)(III) and (IV), and (b) to clarify the conditions under which POST certification may be revoked, and to synchronize the process for hearings with that of Rule

**Rule 11:**

- a. Amending Rule 11-Provisional Certification, changing the effective date of Rule 11 to July 1, 2018.
- b. Amending Rule 11(b) to specify the need for a Ryle 7 Variance should time-in-service requirements expire while completing the Provisional process.

**Rule 15:**

- a. Amending Rule 15- Certification Examination Basic, Provisional, Renewal, changing the effective date of Rule 15 to July 1, 2018.
- b. Amending Rule 15(a)(III) to remove erroneous wording regarding academy certificate, and to expand the documentation for proof of high school completion.

**Rule 16:**

- a. Amending Rule 16- Skills Examinations for Provisional and Renewal Applicants, changing the effective date of Rule 16 to July 1, 2018.
- b. Amending Rule 16(c)(I) to specify the time limit by which training must be completed subsequent to failure of three attempted skills exams.

**Rule 21:**

- a. Amending Rule 21- Basic and Reserve Training Academies, changing the effective date of Rule 21 changing the effective date to July 1, 2018.
- b. Amending Rule 21 multiple sections to clarify submission and format of various records, lesson plans, and site safety plans.
- c. Amending Rule 21(d)(IV)(D) to exclude use of operable firearms for any training not related to live-fire firearms training.

**Rule 24:**

- a. Amending Rule 24- Skills Training Safety and Skills Program Requirements for Basic and Reserve Academies, changing effective date of Rule 24 to July 1, 2018.
- b. Amending Rule 24(a)(VI)(B) and (d)(X) to clarify completion requirements for firearms program.
- c. Amending Rule 24(b)(VIII) and (c)(VII) to exclude the use of operable firearms during any arrest control or law enforcement driving training.
- d. Amending Rule 24(c)(VI) to specify night driving conditions.

**Rule 28:**

- a. Amending Rule 28- **In-Service Training Program**, changing effective date of Rule 28 to July 1, 2018.
- b. Amending Rule 28(e)(I) to change the deadline by which waivers must be received.

**List of New Rules or Revisions to Existing Rules Expected to Be Proposed in CY 2019**

**II. Consumer Credit Unit**

**A. Colorado Fair Debt Collection Practices Act (CFDCPA)**

**1. Proposed Rules**

- a. New rules implementing changes to CFDCPA as a result of the sunset review.
- b. Amend rule 1.04 under the CFDCPA regarding the process for Letters of Admonition.
- c. Repeal rule 1.08 on Abbreviated Applications.
- d. Amend rule 2.03(1) to clarify what “expressly authorized” means.
- e. Amend rule 3.01 to clarify trust account requirements and liquid asset requirements of C.R.S. §5-16-123.
- f. Amend rule 3.04 to clarify sufficiency of financial responsibility.
- g. New rule regarding what is and is not allowed as far as a payment convenience fee.
- h. New rule regarding the requirements before a collection agency may utilize ACH or other electronic payment methods in the collection of a debt.
- i. New rule clarifying the administration of C.R.S. §5-16-108(1)(j).
- j. New rules implementing changes to CFDCPA as a result of the sunset review.
- k. New rule clarifying application of CFDCPA to debt buyers.

**2. Statutory Basis**

The statutory basis for adoption of any proposed rules is C.R.S. §5-16-114.

**3. Purpose**

The purpose of the any proposed rule is to provide clarification to persons subject to the CFDCPA of terms used therein so they may conform their conduct to the law. Clarification in definitions and processes results in better compliance, consumer protection, and efficient enforcement.

**4. Contemplated Schedule for Adoption**

Rules will likely be adopted and/or repealed by December 31, 2018.

**5. Listing of Persons and Parties Affected**

Persons subject to the Act, including collection agencies and consumers that are collected upon by such companies, will be affected by this anticipated rulemaking.

## **Departmental Regulatory Agendas**

### **Department**

Department of Agriculture

# 2019

## Regulatory Agenda

January 1, 2019-December 31, 2019



**COLORADO**  
Department of Agriculture

## Overview

The Colorado Department of Agriculture submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in Colo. Rev. Stat. §2-7-203(4). Pursuant to state law, annually on November 1 executive-branch agencies must file a Departmental Regulatory Agenda (DRA) containing:

- A list of new rules or amendments that the department or its divisions expect to propose in the next calendar year;
- The statutory or other basis for adoption of the proposed rules;
- The purpose of the proposed rules;
- The contemplated schedule for adoption of the rules;
- An identification and listing of persons or parties that may be affected positively or negatively by the rules; and
- A list and brief summary of all permanent and temporary rules adopted since the previous DRA was filed.

The Regulatory Agenda also includes, pursuant to Colo. Rev. Stat. §24-4-103.3, rules to be reviewed as part of the Department's "Regulatory Efficiencies Reviews" during 2019 (which are denoted as such in the "purpose" column). The DRA is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on the department's web site, and submitted to the Secretary of State for publication in the Colorado Register. Each department must also present its DRA as part of its "SMART Act" hearing and presentation pursuant to Colo. Rev. Stat. §2-7-203(2)(a)(II).

The following constitutes the Department of Agriculture's Regulatory Agenda for 2019 and is provided in accordance with Colo. Rev. Stat. §24-7-203(2)(a)(IV):

Anticipated Adoption Date	Rule Number	Rule Title	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders <i>Consider including high-level outreach bullets</i>	Part of Mandatory Rule Review
February 13, 2019	8 CCR 1202-13	"Rules Pertaining to the Administration and Enforcement of the Custom Processing of Meat Animals Act"	Revision	35-33-104 (1)	Remove the poultry processing and record keeping and labeling, requirements from this rule and include them in new rules at 8 CCR 1202-16. Other changes may result from a regulatory review.	Licensed poultry producers	X
February 13, 2019	8 CCR 1202-16	"Rules Pertaining to Poultry Processing"	New	35-33-104 (1)	Create new rules for poultry processors who raise less than 20,000 poultry per calendar year, to process their own poultry for sale to Colorado retail food establishments.	Licensed poultry producers	



Anticipated Adoption Date	Rule Number	Rule Title	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders <i>Consider including high-level outreach bullets</i>	Part of Mandatory Rule Review
February 13, 2019	8 CCR 1202-12	“Rules Pertaining to the Administration and Enforcement of the Sale of Meat Act Method of Sale of Home Food Service”	Repeal	HB 18-1183	Repeal this rule as HB 18-1183 repealed the Sale of Meat Act.	Home food service providers	X
February 13, 2019	8 CCR 1203-23	“Rules Pertaining to the Administration and Enforcement of the Industrial Hemp Regulatory Program Act”	Revision	35-61-104 (5) and 35-61-104.5 (2)	Adjust fees; reduce record keeping requirements; and establish an application for Certified Seed production fields.	Industrial hemp growers	
February 13, 2019	8 CCR 1203-13	“Quarantine for Late Blight”	Revision	35-4-110	Clarify definitions; update language; exempt nuclear seed stock from re-inspection; and set rules regarding imported breeding seed lots.	Seed potato importers	
April 10, 2019	8 CCR 1203-1	“Administration and Enforcement of the Pesticide Act”	Revision	35-9-118	Update the form allowed for compliance of insurance requirements and update continuing education requirements.	Pesticide applicators	
April 10, 2019	8 CCR 1203-4	“Rules and Regulations Pertaining to the Administration and Enforcement of the Bee and Bee Products Act”	Repeal	35-25-105	Considering repeal as a result of the 2018 regulatory review.	Beekeepers	
April 10, 2019	8 CCR 1203-7	“Rules and Regulations Pertaining to the Procedure for Establishing Pest Control Districts and for the Control of Grasshoppers, Mormon Crickets or Range Caterpillars”	Repeal	35-5-103	Considering repeal as a result of the 2018 regulatory review.	Farmers and ranchers in pest control districts	

Anticipated Adoption Date	Rule Number	Rule Title	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders <i>Consider including high-level outreach bullets</i>	Part of Mandatory Rule Review
June 12, 2019	8 CCR 1202-15	"Rules Pertaining to the Administration and Enforcement of the Pet Animal Care and Facilities Act"	Revision	35-80-109 (1) and (2)	Changes are expected as a result of a Sunset review.	Pet owners and pet animal care facilities	X
June 12, 2019	8 CCR 1203-5	"Rules Pertaining to the Administration and Enforcement of the Colorado Nursery Act"	Revision	35-26-103	Increase fees charged for inspections.	Greenhouse and nursery industry	
June 12, 2019	8 CCR 1203-6	"Rules and Regulations Pertaining to the Administration and Enforcement of the Colorado Seed Act"	Revision	35-27-111	Fee increase for retail seed dealers.	Retailers of flower, vegetable and grass seeds	X
September 18, 2019	8 CCR 1203-22	"Rules and Regulations Pertaining to the Colorado Seed Potato Act"	Revision	35-27.3-108 (1)(b)	Changes are expected as a result of a Sunset review.	Seed potato growers	X
September 18, 2019	8 CCR 1203-9	"Administration and Enforcement of the Organic Certification Act"	Revision	35-11.5-104	Eliminate a fee cap on registrations and adjust the fee structure.	Organic producers	
November 13, 2019	8 CCR 1203-24	"Quarantine Imposed Against All Life Stages of the Emerald Ash Borer ( <i>Agrilus Planipennis</i> , Fairmaire) and Hosts or Possible Carriers of Emerald Ash Borer Pursuant to the Colorado Pest Control Act"	Revision	35-4-110	Update for consistency with federal guidelines.	Colorado residents, the nursery industry, fruit growers, and forestry	

Anticipated Adoption Date	Rule Number	Rule Title	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders <i>Consider including high-level outreach bullets</i>	Part of Mandatory Rule Review
	8 CCR 1202-10	“Rules Pertaining to the Administration and Enforcement of the Colorado Egg Law”		35-21-106 (1)	Changes may be proposed as a result of the Department’s Regulatory Efficiency Review process.	Egg producers and dealers	X
	8 CCR 1202-11	“Administration and Enforcement of the Commodity Handler and Farm Products Acts, Sections 35-36-101 through 125 and 35-37-101 through 122, C.R.S.”		35-36-111 (1) and 35-37-120 (1)	Changes may be proposed as a result of the Department’s Regulatory Efficiency Review process.	Commodity warehouses, producers, farm product dealers and handlers	X
	8 CCR 1202-13	“Rules Pertaining to the Administration and Enforcement of the Custom Processing of Meat Animals Act”		35-33-104 (1)	Changes may be proposed as a result of the Department’s Regulatory Efficiency Review process.	Custom meat processors	X
	8 CCR 1203-6	“Rules and Regulations Pertaining to the Administration and Enforcement of the Colorado Seed Act”		35-27-114 (1)(b)	Changes may be proposed as a result of the Department’s Regulatory Efficiency Review process.	Custom seed conditioners, farmer seed labelers, retail seed dealers, seed labelers	X
	8 CCR 1203-14	“Rules Pertaining to the Pest Control Act Inspections and Federal Agreements”		35-4-116	Changes may be proposed as a result of the Department’s Regulatory Efficiency Review process.	USDA-APHIS, pesticide applicators and growers	X
	8 CCR 1205-1	“Public Livestock Markets”		35-55-106	Changes may be proposed as a result of the Department’s Regulatory Efficiency Review process.	Public livestock markets	X

## **Departmental Regulatory Agendas**

### **Department**

Department of Corrections

# 2019

## Regulatory Agenda Report



**COLORADO**

Department of Corrections

## Overview

The Colorado Department of Corrections submits the following 2018-19 Regulatory Agenda in fulfillment of the statutory requirements set forth in Colorado Revised Statute 2-7-203(4). Pursuant to state law, annually on November 1, executive branch agencies must file a Departmental Regulatory Agenda containing:

- A list of new rules or amendments that the department or its divisions expect to propose in the next calendar year;
- The statutory or other basis for adoption of the proposed rules;
- The purpose of the proposed rules;
- The contemplated schedule for adoption of the rules;
- An identification and listing of persons or parties that may be affected positively or negatively by the rules; and
- A list and brief summary of all permanent and temporary rules adopted since the previous Departmental Regulatory Agenda was filed.

The Departmental Regulatory Agenda also includes, pursuant to Colorado Revised Statute 24-4-103.3, rules to be reviewed as part of the Department “Regulatory Efficiency Reviews” during 2018-19 (which are denoted in the “purpose” column). The Departmental Regulatory Agenda is to be filed with the Legislative Council staff for distribution to Committee(s) of reference, posted on the department’s website, and submitted to the Secretary of State for publication in the Colorado Register. Each department must also present its Departmental Regulatory Agenda as a part of its “Smart Act” hearing and presentation pursuant to the Colorado Revised Statute 2-7-203(2)(a)(III)(A).

The following constitutes Colorado Department of Corrections Departmental Regulatory Agenda for 2018-19 and is provided in accordance with Colorado Revised Statute 24-7-203(2)(a)(IV):

Schedule Month, Year	Rule Number and Title	Division/ Board/ Program	New rule, revision , or repeal	Statutory or Other Basis	Purpose	Stakeholders
August 2018	AR 1350-02, Victim Notification Program	Executive Director	Revision	SB 18-014, Disclose Location of Out-of-State Inmate	The department will notify the prosecuting attorney and any registered victim of crimes for which the inmate is serving his or her sentence of the name and location of the penal institution where the inmate is to be housed.	Victims, District Attorneys

July 2019	AR 250-51, Office Visits and Intake Packets	Division of Adult Parole	Revision	SB 18-150, Voter Registration Individuals Criminal Justice System	Requires the division of adult parole to facilitate the voting rights of people being discharged from parole.	Division of Adult Parole, Office of Information Management, Parole Officers, Parolees
July 2018	AR 700-19, Sex Offender Treatment and Monitoring Program	Clinical and Correctional Services / Finance and Administration	Revision	HB 18-1040, Inmate Treatment Incentive Plans	<p>The bill requires the department of corrections to:</p> <ul style="list-style-type: none"> <li>• Monitor the number of inmates who need sex offender treatment or services and the number who are not receiving such treatment or services;</li> <li>• Develop an incentive plan to contract for more mental health professionals to provide sex offender treatment or services in difficult-to-serve geographic areas; and</li> <li>• Report to the joint budget committee the number of inmates needing treatment or services, the number not receiving the treatment or services, and the impact of the incentive plan.</li> </ul>	Office of Planning and Analysis, Clinical/Mental Health, Budget, Human Resources, Offenders
July 2018	AR 550-13, Special Needs Parole	Prison Operations / Parole Board	Revision	HB 18-1109, Discretionary Parole Of Special Needs Offenders	<ul style="list-style-type: none"> <li>• Changes definition of special needs offender from 60 years' to '55 years'.</li> <li>• The bill also adds a third definition by which such an offender may be considered a 'special needs offender'.</li> <li>• The parole board must also make a finding that granting parole would create a threat to public safety and that the offender is likely to commit an offense.</li> </ul>	Parole Board, Offenders, Case Management, Clinical
August 2018	AR 550-01, Integrated Case Management System	Parole Board / Prison Operations	Revision	HB 18-1251, Community Corrections Transition Placements	Requires the state board of parole to submit a list of offenders for community corrections transition placement referrals to the department of corrections staff.	Parole Board, Offenders, Case Management, Community Corrections

## **Departmental Regulatory Agendas**

### **Department**

Department of Higher Education





1560 Broadway, Suite 1600  
Denver, CO 80202

John Hickenlooper  
Governor

Dr. Dan Baer  
Executive Director

November 1, 2018

Natalie Mullis, Director,  
Legislative Council  
Colorado General Assembly  
State Capitol, Room 029  
Denver, CO 80203

Ms. Mullis:

Pursuant to Colorado Revised Statutes 2-7-203(4), the Colorado Department of Higher Education respectfully submits the following regulatory agenda, which includes items for the Division of Private Occupational Schools, the Colorado Opportunity Scholarship Initiative, and the State Historical Society.

## 2019 REGULATORY AGENDA of the COLORADO DEPARTMENT OF HIGHER EDUCATION

Title/Description Proposed Rule	Basis and/or Statutory Authority	Purpose of Proposed Rule	Estimated Schedule for Rule-Making	Parties Potentially Affected
<b>State Historical Society</b>				
Income Tax Credit for Qualified Costs Incurred in Preservation of Qualified Residential Structures	Section 39-22- 514.5 C.R.S..	Develop standards for the approval of the substantial rehabilitation of qualified residential structures for which a tax credit is claimed (Section 39-22-514.5(4)(b)). Develop rules on standards and reporting for certified local governments acting as a reviewing entity for the substantial rehabilitation tax credits of a residential structure (Section 39-22-514.5(5.50)(III)(c)). Develop rules necessary to further implement tax credits for the substantial rehabilitation of qualified residential structures (Section 39-22-514.5 (5.5)(III)(e)).	Notice: November 2018	Owners of Colorado Residential Properties; Municipalities; Counties



Title/Description Proposed Rule	Basis and/or Statutory Authority	Purpose of Proposed Rule	Estimated Schedule for Rule-Making	Parties Potentially Affected
<b>Division of Private Occupational Schools</b>				
REVISE: 8CCR 1504-1, section I. to include definitions for terms that require clarity.	C.R.S. § 23-64-101 et seq.; and specifically C.R.S. § 23-64-108(1)(i).	It will be helpful to add certain definitions to ensure that the terms that multiple uses or meanings are clearly defined.	Notice: February of 2019.	Owners & Operators of Private Occupational School will understand the terms as applied to Colorado's Act and Rules; the Division of Private Occupational Schools and all other stakeholders will benefit from clarity as our rules protect members of the general public (including students and residents of Colorado). There is no fiscal impact
REVISE: 8 CCR 1504-1, section IV. to include a new provision G. that will clarify permissible uses of the bond.	Senate Bill 18-177 amended C.R.S. § 23-64-121 to expand the permissible uses of the bond.	The rule will clarify that permissible use of the bond now includes reimbursement to the department for any actual administrative costs associated with school closures provided all necessary refunds are first allocated to students.	Notice: February of 2019.	Owners & Operators of Private Occupational Schools may have a portion of their bond appropriated for administrative cost associated with closure of their particular school but only in cases where it is necessary to utilize the bond to ensure that all statutory requirements associated with school closure are met in order to preserve records and protect student transcripts. The Division and students as well as the general public will be protected by this measure. There will be a possible fiscal impact to school owners who are not in compliance with statutory requirements if the Division needs to utilize the schools bond.
<b>Colorado Opportunity Scholarship Initiative</b>				
<ul style="list-style-type: none"> <li>Nothing to report for 2019</li> </ul>				



## **Departmental Regulatory Agendas**

### **Department**

Department of State

**STATE OF  
COLORADO**  
**Department of State**  
1700 Broadway  
Suite 200  
Denver, CO 80290

---



**Wayne W. Williams**  
Secretary of State  
  
**Suzanne Staiert**  
Deputy Secretary of State

---

**2019 Departmental Regulatory Agenda**  
**Office of the Secretary of State**  
**November 1, 2018**

To: The Staff of Legislative Council

Re: Colorado Department of State – 2019 Departmental Regulatory Agenda

The Colorado Secretary of State submits the following 2019 Departmental Regulatory Agenda for the Department of State to the General Assembly in accordance with state laws concerning legislative oversight of principal departments.<sup>1</sup>

Contents:

DEPARTMENT REGULATORY AGENDA.....	2
SUMMARY OF RULES ADOPTED AFTER NOVEMBER 1, 2017 .....	8
PUBLICATION AND AVAILABILITY TO THE PUBLIC .....	13

---

<sup>1</sup> Section 2-7-203(4), C.R.S.

DEPARTMENT REGULATORY AGENDA

Rule number and title	New or revised rules that the department expects to propose in the next calendar year and the purpose of the rules	Statutory or other basis for adopting those rules	Contemplated schedule for adopting the rules	Persons or parties that may be positively or negatively affected by the rules
8 CCR 1505-1: Elections	<p>The Secretary of State may commence rulemaking to consider amendments to the Election Rules necessary to:</p> <ul style="list-style-type: none"><li>• Improve the administration and enforcement of and to answer questions arising under Colorado elections law<sup>1</sup></li><li>• Implement amendments to Colorado laws adopted during the First Regular Session of the 72<sup>nd</sup> General Assembly</li><li>• Issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103(7), C.R.S.</li></ul>	<p>Section 1-1-107(2)(a), C.R.S.</p> <p>Depending on the subject matter of unanticipated rulemaking, additional statutory and constitutional authority may apply.</p>	<p>TBD; the Secretary of State will commence rulemaking as necessary in a timely manner and in accordance with the State Administrative Procedure Act.</p>	<ul style="list-style-type: none"><li>• All current and potential Colorado residents</li><li>• Colorado County Clerks and Records</li><li>• Candidates for office in Colorado</li><li>• Poll watchers, election judges, and other interested parties</li><li>• Petition proponents and circulators</li></ul>

<sup>1</sup> Article VII of the Colorado Constitution, Title 1 of the Colorado Revised Statutes, and the Help America Vote Act of 2002 (“HAVA”), P.L. No. 107-252.

2019 Departmental Regulatory Agenda

Rule number and title	New or revised rules that the department expects to propose in the next calendar year and the purpose of the rules	Statutory or other basis for adopting those rules	Contemplated schedule for adopting the rules	Persons or parties that may be positively or negatively affected by the rules
8 CCR 1505-2: Bingo and Raffles Games	<p>The Secretary of State does not anticipate rulemaking regarding the Rules Concerning Bingo and Raffles Games; however, the Secretary may commence rulemaking as necessary to:</p> <ul style="list-style-type: none"> <li>• Improve the administration and enforcement of the Colorado bingo and raffles law<sup>2</sup></li> <li>• Improve rule organization and readability</li> <li>• Ensure that the rules are written in plain language and easy to understand</li> <li>• Repeal obsolete rules and language that duplicates statute</li> <li>• Other technical amendments as necessary for consistency with Department rulemaking format and style</li> <li>• Implement amendments to Colorado laws adopted during the First Regular Session of the 72<sup>nd</sup> General Assembly</li> <li>• Issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103 (7), C.R.S.</li> </ul>			
8 CCR 1505-3: Rules Governing General Policies and Administration	<p>The Secretary may propose amendments to the Rules Governing General Policies and Administration as necessary to:</p> <ul style="list-style-type: none"> <li>• Clarify declaratory order rules in accordance with section 24-4-105(11), C.R.S.</li> <li>• Improve rule organization and readability</li> <li>• Ensure that the rules are written in plain language and easy to understand</li> <li>• Repeal obsolete rules and language that duplicates statute</li> <li>• Other technical amendments as necessary for consistency with Department rulemaking format and style</li> <li>• Implement amendments to Colorado laws adopted during the First Regular Session of the 72<sup>nd</sup> General Assembly</li> <li>• Issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103 (7), C.R.S.</li> </ul>	<p>24-4-105(11), C.R.S.</p> <p>Additional statutory and constitutional authority may depend on the subject matter of rulemaking.</p>	TBD; the Secretary of State will commence rulemaking as necessary in a timely manner and in accordance with the State Administrative Procedure Act.	<ul style="list-style-type: none"> <li>• Declaratory order petitioner</li> <li>• Parties to any agency adjudicatory proceeding</li> <li>• Additional persons or parties that may be affected depending on the subject matter of rulemaking</li> </ul>

<sup>2</sup> Article XVIII, Section 2 of the Colorado Constitution and Article 9, Title 12 of the Colorado Revised Statutes.

2019 Departmental Regulatory Agenda

Rule number and title	New or revised rules that the department expects to propose in the next calendar year and the purpose of the rules	Statutory or other basis for adopting those rules	Contemplated schedule for adopting the rules	Persons or parties that may be positively or negatively affected by the rules
8 CCR 1505-6: Rules Concerning Campaign and Political Finance	<p>The Secretary may propose amendments to the Rules Concerning Campaign and Political Finance as necessary to:</p> <ul style="list-style-type: none"> <li>• Improve the administration and enforcement of Colorado campaign finance law<sup>3</sup></li> <li>• Address litigation concerns</li> <li>• Clarify the campaign finance complaint process</li> <li>• Implement amendments to Colorado laws adopted during the First Regular Session of the 72<sup>nd</sup> General Assembly</li> <li>• Implement amendments to Colorado laws if Amendment 75 is passed in the 2018 general election</li> <li>• Issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103(7), C.R.S.</li> </ul>	Colo. Const. art. XXVIII, Sections 8, 9(1)(b); Sections 1-1-107(2)(a) and 45-111.5(1), C.R.S.	This office estimates commencement of rulemaking in accordance with the State Administrative Procedure Act post-2018 general election; post-legislative session; or at the conclusion of any significant litigation.	<ul style="list-style-type: none"> <li>• All Colorado residents and potential residents</li> <li>• Political subdivisions</li> <li>• Officeholders</li> <li>• Candidates for office in Colorado</li> <li>• Party organization sin Colorado</li> <li>• Candidate or issue organizations and committees in Colorado</li> </ul>
8 CCR 1505-7: UCC Filing Office Rules	<p>The Secretary of State does not anticipate rulemaking regarding the UCC Filing Office Rules; however, the Secretary may commence rulemaking as necessary to:</p> <ul style="list-style-type: none"> <li>• Improve the administration and enforcement of Colorado's Uniform Commercial Code<sup>4</sup></li> <li>• Improve rule organization and readability</li> <li>• Ensure that the rules are written in plain language and easy to understand</li> <li>• Repeal obsolete rules and language that duplicates statute</li> <li>• Other technical amendments as necessary for consistency with Department rulemaking format and style</li> <li>• Implement amendments to Colorado laws adopted during the First Regular Session of the 72<sup>nd</sup> General Assembly</li> <li>• Issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103 (7), C.R.S.</li> </ul>			

<sup>3</sup> Article 45 of Title 1, C.R.S., and Article XXVIII of the Colorado Constitution.

<sup>4</sup> Article 9 of Title 4, C.R.S.

2019 Departmental Regulatory Agenda

Rule number and title	New or revised rules that the department expects to propose in the next calendar year and the purpose of the rules	Statutory or other basis for adopting those rules	Contemplated schedule for adopting the rules	Persons or parties that may be positively or negatively affected by the rules
8 CCR 1505-8: Rules Concerning Lobbyist Regulation	<p>The Secretary of State may propose amendments to the Rules Concerning Lobbyist Regulation necessary to:</p> <ul style="list-style-type: none"> <li>• Improve the administration and enforcement of Colorado laws regarding lobbyist regulation<sup>5</sup></li> <li>• Propose amendments in response to questions from the Office of Legislative Legal Services including proposed clarification of Rules 2.2.1(b) and 3.2.2(b); consider stating compensation rather than money paid in the rules</li> <li>• Implement amendments to Colorado laws adopted during the First Regular Session of the 72<sup>nd</sup> General Assembly</li> <li>• Issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103(7), C.R.S.</li> </ul>	Section 24-6-305(2)(b), C.R.S.	TBD; the Secretary of State will commence rulemaking as necessary in a timely manner and in accordance with the State Administrative Procedure Act.	<ul style="list-style-type: none"> <li>• Professional lobbyists</li> <li>• Lobbying firms</li> <li>• The general Colorado public</li> </ul>
8 CCR 1505-9: Rules for the Administration of the Colorado Charitable Solicitations Act	<p>The Secretary may propose amendments to the Rules for the Administration of the Colorado Charitable Solicitations Act<sup>6</sup> as necessary to:</p> <ul style="list-style-type: none"> <li>• Improve the administration and enforcement of and to answer questions arising under the Colorado Charitable Solicitations Act</li> <li>• Propose amendments in response to questions from the Office of Legislative Legal Services including proposed clarification of Rule 6.1.1 concerning fines</li> <li>• Implement amendments to Colorado laws adopted during the First Regular Session of the 72<sup>nd</sup> General Assembly</li> <li>• Issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103 (7), C.R.S.</li> </ul>	<p>Sections 6-16-110.5(3) and 6-16-114 C.R.S.</p> <p>Additional statutory and constitutional authority may depend on the subject matter of rulemaking.</p>	TBD; the Secretary of State will commence rulemaking as necessary in a timely manner and in accordance with the State Administrative Procedure Act.	<ul style="list-style-type: none"> <li>• Paid solicitors</li> <li>• Professional fundraising consultants</li> <li>• The general Colorado public</li> </ul>

<sup>5</sup> Part 3 of Article 6 of Title 24, C.R.S.

<sup>6</sup> Article 16 of Title 6, C.R.S.



# 2019 Departmental Regulatory Agenda

Rule number and title	New or revised rules that the department expects to propose in the next calendar year and the purpose of the rules	Statutory or other basis for adopting those rules	Contemplated schedule for adopting the rules	Persons or parties that may be positively or negatively affected by the rules
8 CCR 1505-10: Rules Concerning the Electronic Recording Technology Grant Program	In 2015, the Secretary of State reviewed the Electronic Recording Technology Grant Program rules and determined that the rules are obsolete and inoperative. Additionally, Senate Bill 16-115 amendments to section 30-10-424, C.R.S., repealed the Secretary of State's authority to promulgate rules necessary for the administration of section 30-10-421, C.R.S. 8 CCR 1505-10 will continue in its current form until the Electronic Recording Technology Board commences rulemaking.			
8 CCR 1505-11: Notary Program Rules	<p>The Secretary of State does not anticipate rulemaking regarding the Notary Program Rules, however, the Secretary may commence rulemaking as necessary to:</p> <ul style="list-style-type: none"> <li>• Improve the administration and enforcement of the Colorado Revised Uniform Law on Notarial Acts (RULONA)<sup>7</sup></li> <li>• Implement amendments to Colorado laws adopted during the First Regular Session of the 72<sup>nd</sup> General Assembly</li> <li>• Issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103(7), C.R.S.</li> </ul>			

<sup>7</sup> Article 21 of Title 24, Part 5, C.R.S.

2019 Departmental Regulatory Agenda

Rule number and title	New or revised rules that the department expects to propose in the next calendar year and the purpose of the rules	Statutory or other basis for adopting those rules	Contemplated schedule for adopting the rules	Persons or parties that may be positively or negatively affected by the rules
8 CCR 1505-12: Public Records Pursuant to the Colorado Open Records Act (CORA)	<p>The Secretary may propose amendments to the Rules Concerning Public Records Pursuant to the Colorado Open Records Act (CORA) as necessary to:</p> <ul style="list-style-type: none"> <li>• Improve the administration and enforcement of the Colorado Open Records Act<sup>8</sup></li> <li>• Improve rule organization and readability</li> <li>• Ensure that the rules are written in plain language and easy to understand</li> <li>• Repeal obsolete rules and language that duplicates statute</li> <li>• Other technical amendments as necessary for consistency with Department rulemaking format and style</li> <li>• Implement amendments to Colorado laws adopted during the First Regular Session of the 72<sup>nd</sup> General Assembly</li> <li>• Issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103 (7), C.R.S.</li> </ul>	<p>Section 24-72-203(1)(a), C.R.S.</p> <p>Additional statutory and constitutional authority may depend on the subject matter of rulemaking.</p>	TBD; the Secretary of State will commence rulemaking as necessary in a timely manner and in accordance with the State Administrative Procedure Act.	<ul style="list-style-type: none"> <li>• A person who requests information in accordance with the Colorado Open Records Act</li> <li>• Additional persons or parties that may be affected depending on the subject matter of rulemaking</li> </ul>
8 CCR 1505-14: Rules Concerning Conflict of Interest Disclosures	<p>The Secretary may propose amendments to the Rules Concerning Conflict of Interest Disclosures as necessary to:</p> <ul style="list-style-type: none"> <li>• Improve the administration and enforcement Colorado standards of conduct law<sup>9</sup></li> <li>• Improve rule organization and readability</li> <li>• Ensure that the rules are written in plain language and easy to understand</li> <li>• Repeal obsolete rules and language that duplicates statute</li> <li>• Other technical amendments as necessary for consistency with Department rulemaking format and style</li> <li>• Implement amendments to Colorado laws adopted during the First Regular Session of the 72<sup>nd</sup> General Assembly</li> <li>• Issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103 (7), C.R.S.</li> </ul>	<p>24-21-104, C.R.S. 24-21-111, C.R.S.</p> <p>Additional statutory and constitutional authority may depend on the subject matter of rulemaking.</p>	TBD; the Secretary of State will commence rulemaking as necessary in a timely manner and in accordance with the State Administrative Procedure Act.	<ul style="list-style-type: none"> <li>• Public officials and employees who voluntarily disclose potential conflicts of interest</li> <li>• Additional persons or parties that may be affected depending on the subject matter of rulemaking</li> </ul>

<sup>8</sup> Article 72 of Title 24, C.R.S.

<sup>9</sup> Article 18 of Title 24, C.R.S.

## SUMMARY OF RULES ADOPTED AFTER NOVEMBER 1, 2017

Rule number and title	CCR Tracking Number	Type	Adopted	Effective	Summary
8 CCR 1505-1: Elections	<a href="#">2017-00221</a>	Permanent	8/11/2017	9/30/2017	The Secretary adopted rule revisions necessary to ensure proper administration of legislation passed by the Colorado General Assembly (SB 17-305); establish uniformity in the administration of current law; organize existing rules for clarity; eliminate obsolete provisions; simplify the language of existing rules; remove language that is duplicative of statute; and ensure consistency with Department rulemaking standards.
8 CCR 1505-1: Elections	<a href="#">2017-00504</a>	Temporary	10/20/2017	10/20/2017	Temporary Rule 2.16.3 was necessary given the close proximity of the 2017 Coordinated Election. The Secretary of State adopted rules to provide clear guidance to county clerks regarding election systems security requirements.
8 CCR 1505-1: Elections	<a href="#">2017-00536</a>	Temporary	11/1/2017	11/1/2017	Repeal of current Rule 7.16 was necessary given discussions regarding the permissibility of cross-county Voter Polling and Service Centers. Additionally, further research and testing indicated that SCORE would require substantial updates before the department and counties could implement the pilot program. The department continued to work with counties and other stakeholders to craft the pilot program but at the time, believed it was best to repeal the rule.
8 CCR 1505-1: Elections	<a href="#">2017-00494</a>	Permanent	12/7/2017	1/30/2018	The Secretary adopted rule revisions necessary to ensure proper administration of legislation passed by the Colorado General Assembly (SB 17-305, HB 17-1088); establish uniformity in the administration of current law; organize existing rules for clarity; eliminate obsolete provisions; simplify the language of existing rules; remove language that is duplicative of statute; and ensure consistency with Department rulemaking standards.
8 CCR 1505-1: Elections	<a href="#">2018-00034</a>	Permanent	3/26/2018	5/15/2018	The Secretary of State adopted rule revisions necessary to establish uniformity in the administration of current law; to ensure proper administration of Propositions 107 and 108 and SB 17-305; organize existing rules for clarity; eliminate obsolete provisions; simplify the language of existing rules; remove language that is duplicative of statute; and ensure consistency with Department rulemaking standards.
8 CCR 1505-1: Elections	<a href="#">2018-00179</a>	Temporary	4/25/2018	4/25/2018	The Secretary of State temporarily adopted New Rule 7.7.5 to ensure uniform application of the law throughout the state regarding mail ballot cure procedures. Temporary adoption was necessary both to comply with law and to preserve the public welfare given the close proximity of the 2018 Primary Election. The Secretary of State adopted rules to provide clear guidance to county clerks regarding mail ballot cure procedures.

2019 Departmental Regulatory Agenda

Rule number and title	CCR Tracking Number	Type	Adopted	Effective	Summary
8 CCR 1505-1: Elections	<a href="#">2018-00215</a>	Temporary	5/16/2018	5/16/2018	<p>The Secretary of State temporarily adopted New Rule 2.18 to ensure uniform application of the law throughout the state regarding residency for voter registration purposes. Temporary adoption was necessary both to comply with law and to preserve the public welfare given the close proximity of the 2018 Primary Election. The Secretary of State adopted rules to provide clear guidance regarding residency as it relates to voter registration in the state.</p> <p>In <i>Kuhn v. Williams</i><sup>10</sup>, the Colorado Supreme Court held that for voter registration purposes, an elector’s “stated intent to live in Colorado in the future is relevant only if he has a fixed habitation in Colorado to which he presently intends to return.” On May 14, 2018, at the Secretary of State’s request, the Court modified its order to reflect that its holding applied only to a person who is attempting to establish residency in Colorado, not to an elector who is already a resident of Colorado.<sup>11</sup></p> <p>The Court’s modification was critical because there are many circumstances in which an elector, having properly registered to vote in Colorado, is able to maintain his or her Colorado residency and voter registration in the absence of a legal interest in a fixed habitation. Colorado residents may be absent from the state for a number of reasons, including to volunteer in the Peace Corps, to do missionary work, or to find seasonal work, to name a few. These residents remain eligible to be registered and to vote in Colorado, despite their absence and regardless of their property interests in the state.</p> <p>New Rule 2.18 is consistent with the Supreme Court’s holding and necessary to ensure uniform application of residency requirements in Colorado for electors who are absent from the state but who remain Colorado residents.</p>
8 CCR 1505-1: Elections	<a href="#">2018-00375</a>	Temporary	7/31/2018	7/31/2018	<p>The Secretary of State temporarily adopted New Rules 2.3.2(a)(4), 2.19, and 7.17 to provide clear guidance the county clerks concerning acceptable identification, voter registration at county jails, and ballot transmission to county jails and detention facilities. Temporary adoption was necessary both to comply with law and to preserve the public welfare given the close proximity of the mail ballot plan deadline; August 8, 2018</p>
8 CCR 1505-1: Elections	<a href="#">2018-00415</a>	Temporary	8/22/2018	8/22/2018	<p>The Secretary of State found that certain amendments to the existing election rules were necessary to ensure the uniform and proper administration and enforcement of Colorado election laws and to implement SB 18-233. Temporary adoption was necessary both to comply with law and to preserve the public welfare given the close proximity of the November 6, 2018 General Election and to provide clear guidance the county clerks and the general public.</p>

<sup>10</sup> *Kuhn v. Williams*, 2018 CO 30, ¶ 53 (April 23, 2018).

<sup>11</sup> *Kuhn v. Williams*, 2018 CO 30M, ¶ 53 (May 14, 2018).

2019 Departmental Regulatory Agenda

Rule number and title	CCR Tracking Number	Type	Adopted	Effective	Summary
8 CCR 1505-1: Elections	<a href="#">2018-00221</a>	Permanent	8/22/2018	10/15/2018	The Secretary permanently adopted temporary Rules 2.18 (adopted on 5/16/18; CCR Tracking: 2018-00215) and 7.7.5 (adopted on 4/25/18; CCR Tracking: 2018-00179). Additionally, the Secretary adopted new rules concerning voter registration at county jails and ballot transmission to county jails and detention facilities. The Secretary adopted additional rule amendments including revisions necessary to ensure proper administration of legislation recently passed by the Colorado General Assembly; establish uniformity in the administration of current law; eliminate obsolete provisions; simplify the language of existing rules; remove language that is duplicative of statute or constitutional provisions; and ensure consistency with Department rulemaking standards.
8 CCR 1505-1: Elections	<a href="#">2018-00296</a>	Permanent	8/22/2018	10/15/2018	The Secretary adopted rule revisions necessary to ensure proper administration of legislation recently passed by the Colorado General Assembly, specifically SB18-233. The Secretary adopted additional rule amendments including revisions necessary to establish uniformity in the administration of current law; establish new rules concerning Ranked Voting Method in accordance with section 1-7-1004, C.R.S.; eliminate obsolete provisions; organize existing rules for clarity; simplify the language of existing rules; remove language that is duplicative of statute or constitutional provisions; and ensure consistency with Department rulemaking standards. The Secretary may consider additional rule amendments.
8 CCR 1505-2: Bingo and Raffle Games	<a href="#">2017-00239</a>	Temporary	6/14/2017	6/14/2017	Senate Bill 17-232 amended and relocated the Bingo and Raffles Law to Part 6, Article 21, Title 24 of the Colorado Revised Statutes. The Secretary of State adopted rules to provide clear guidance to bingo-raffle stakeholders, including current licensees, prospective applicants, charitable game players, and the general public concerning requirements and procedures. The Secretary of State also corrected statutory citations.
8 CCR 1505-2: Bingo and Raffle Games	<a href="#">2017-00240</a>	Permanent	8/7/2017	9/30/2017	The Secretary permanently adopted amendments to the bingo and raffles games rules that were temporarily adopted on 6/14/17 (CCR Tracking: 2017-00239). The rule amendments were necessary to implement Senate Bill 17-232, which made technical and substantive changes to the Bingo and Raffles Law. The Secretary is also adopted other amendments to the rules in order to improve the administration and enforcement of Colorado bingo and raffles laws , answer questions arising under these laws, and improve the administration of bingo and raffles games in Colorado.
8 CCR 1505-6: Rules Concerning Campaign and Political Finance	<a href="#">2017-00362</a>	Temporary	8/10/2017	8/10/2017	The Secretary adopted amendments to ensure uniform and proper administration, implementation, and enforcement of Colorado campaign finance law; to ensure proper administration of legislation passed by the Colorado General Assembly (HB 17-1155); to provide clear guidance to interested parties, including, but not limited to: candidates, political parties, political organizations, and committees, given the close proximity of the November 2017 Coordinated Election.

2019 Departmental Regulatory Agenda

Rule number and title	CCR Tracking Number	Type	Adopted	Effective	Summary
8 CCR 1505-6: Rules Concerning Campaign and Political Finance	<a href="#">2017-00398</a>	Permanent	10/25/2017	12/15/2017	The Secretary adopted amendments, including changes related to the temporary rules adopted 8/10/17 (CCR tracking #2017-00362). The Secretary also adopted rule amendments necessary to improve the administration and enforcement of Colorado campaign finance law; ensure proper administration of legislation recently passed by the Colorado General Assembly (HB 17-1155); establish uniformity in the administration of current law; eliminate obsolete provisions; remove rules stricken by the courts; remove references to repealed statutory provisions; simplify the language of existing rules; remove language that is duplicative of statute or constitutional provisions; and ensure consistency with Department rulemaking standards.
8 CCR 1505-6: Rules Concerning Campaign and Political Finance	<a href="#">2018-00008</a>	Temporary	1/5/2018	1/5/2018	The Secretary of State temporarily adopted amendments to Rule 18.2.4 to correct a drafting error. Temporary adoption was necessary to provide clear guidance to interested parties, including, but not limited to: candidates, political parties, political organizations, and committees, given the close proximity of the June 26, 2018 Primary Election.
8 CCR 1505-6: Rules Concerning Campaign and Political Finance	<a href="#">2018-00202</a>	Temporary	5/4/2018	5/4/2018	On 1/5/2018, the Secretary of State temporarily adopted amendments to Rule 18.2.4 to correct a drafting error. The temporary rule under CCR tracking number 2018-00008 was set to expire on 5/5/18. We readopted Rule 18.2.4 on a temporary basis until permanent adoption was possible.
8 CCR 1505-6: Rules Concerning Campaign and Political Finance	<a href="#">2018-00275</a>	Temporary	6/19/2018	6/19/2018	<p>The Secretary of State temporarily adopted amendments to Rule 18.2 concerning written complaints. The amendments are necessary to ensure enforcement of Colorado’s campaign finance laws and uniform application of the law throughout the state.</p> <p>In <i>Holland v. Williams</i><sup>12</sup>, a private citizen challenged the constitutionality of Colorado’s campaign finance private enforcement system on First and Fourteenth Amendment grounds. On June 12, 2018, the U.S. District Court held that section 9(2)(a) of Article XXVIII of the Colorado Constitution [the private enforcement system] was facially unconstitutional.</p> <p>Amendments to Rule 18.2 are consistent with the U.S. District Court’s holding, and are necessary to ensure that Colorado’s campaign finance laws continue to be enforced in a uniform manner.</p>
8 CCR 1505-6: Rules Concerning Campaign and Political Finance	<a href="#">2018-00222</a>	Permanent	7/11/2018	8/30/2018	The Secretary permanently adopted temporary Rule 18.2.4 on May 4, 2018 (CCR tracking #2018-00202). The Secretary adopted additional rule amendments including revisions necessary to ensure proper administration of legislation passed by the Colorado General Assembly (HB 18-1047); establish uniformity in the administration of current law; eliminate obsolete provisions; remove rules stricken by the courts; remove references to repealed statutory provisions; simplify the language of existing rules; remove language that is duplicative of statute or constitutional provisions; and ensure consistency with Department rulemaking standards.

<sup>12</sup> *Holland v. Williams*, 16-cv-00138 (June 12, 2018).

2019 Departmental Regulatory Agenda

Rule number and title	CCR Tracking Number	Type	Adopted	Effective	Summary
8 CCR 1505-6: Rules Concerning Campaign and Political Finance	<a href="#">2018-00554</a>	Temporary	10/11/2018	10/11/2018	<p>Amendments to temporary Rule 18.2 (initially adopted under CCR Tracking #2018-00275 on June 19, 2018). Includes New Rules: 18.2.4, 18.2.5, 18.2.6(a)(1), 18.2.7(d), 18.2.7(e)(1) and (2), Rule 18.2.10(a)(1)-(3), and Rule 18.2.11. The Secretary simultaneously adopted the rule on a permanent basis under CCR tracking #2018-00402.</p> <p>In <i>Holland v. Williams</i>,<sup>13</sup> a private citizen challenged the constitutionality of Colorado’s campaign finance private enforcement system on First and Fourteenth Amendment grounds. On June 12, 2018, the U.S. District Court held that section 9(2)(a) of Article XXVIII of the Colorado Constitution [the private enforcement system] was facially unconstitutional.</p> <p>Amendments to Rule 18.2 are consistent with the U.S. District Court’s holding, and are necessary to ensure that Colorado’s campaign finance laws continue to be enforced in a uniform manner.</p>
8 CCR 1505-6: Rules Concerning Campaign and Political Finance	<a href="#">2018-00402</a>	Permanent	10/11/2018	Pending	<p>Amendments to temporary Rule 18.2 (initially adopted under CCR Tracking #2018-00275 on June 19, 2018). Includes New Rules: 18.2.4, 18.2.5, 18.2.6(a)(1), 18.2.7(d), 18.2.7(e)(1) and (2), Rule 18.2.10(a)(1)-(3), and Rule 18.2.11. The Secretary simultaneously adopted the rule on a temporary basis under CCR tracking #2018-00554.</p> <p>In <i>Holland v. Williams</i>,<sup>14</sup> a private citizen challenged the constitutionality of Colorado’s campaign finance private enforcement system on First and Fourteenth Amendment grounds. On June 12, 2018, the U.S. District Court held that section 9(2)(a) of Article XXVIII of the Colorado Constitution [the private enforcement system] was facially unconstitutional.</p> <p>Amendments to Rule 18.2 are consistent with the U.S. District Court’s holding, and are necessary to ensure that Colorado’s campaign finance laws continue to be enforced in a uniform manner.</p>
8 CCR 1505-6: Rules Concerning Campaign and Political Finance	<a href="#">2018-00560</a>	Permanent	Pending (11/14/2018 hearing)	Pending	<p>The Secretary proposes revisions necessary to establish uniformity in the administration of current law regarding the use of unexpended campaign funds at the conclusion of the election cycle and amendments to Rule 18.2 concerning written complaints is necessary to ensure enforcement of Colorado’s campaign finance laws and uniform application of the law throughout the state. The Secretary may consider additional rule amendments to eliminate obsolete provisions; simplify the language of existing rules; and ensure consistency with Department rulemaking standards.</p>

<sup>13</sup> *Holland v. Williams*, 16-cv-00138 (June 12, 2018).

<sup>14</sup> *Holland v. Williams*, 16-cv-00138 (June 12, 2018).

## 2019 Departmental Regulatory Agenda

Rule number and title	CCR Tracking Number	Type	Adopted	Effective	Summary
8 CCR 1505-11: Notary Program Rules	<a href="#">2018-00095</a>	Permanent	5/15/2018	7/1/2018	The Secretary adopted amendments to ensure the uniform and proper administration, implementation, and enforcement of the Revised Uniform Law on Notarial Acts (RULONA; SB 17-132). The Secretary adopted additional rule amendments to eliminate obsolete provisions; remove references to repealed statutory provisions; simplify the language of existing rules; remove language that is duplicative of statute or constitutional provisions; and ensure consistency with Department rulemaking standards. Note: our office initially adopted rules on 5/10/2018, however we later discovered that an additional revision would help streamline the timeframe for new applicant and renewal training. Because we had not yet received an AGO, we readopted the rules on 5/15/2018 with an additional edit to Rule 2.1.2.
8 CCR 1505-8: Lobbyist Regulation	<a href="#">2018-00096</a>	Permanent	5/10/2018	6/30/2018	The Secretary adopted amendments and recodification of the rules concerning lobbyist regulation to improve the administration and enforcement of Colorado laws regarding lobbyist regulation. The Secretary adopted rule amendments to establish uniformity in the administration of current law; establish new definitions; simplify the language of existing rules; and ensure consistency with Department rulemaking standards.
8 CCR 1505-9: Colorado Charitable Solicitations Act	<a href="#">2018-00492</a>	Temporary	9/21/2018	10/1/2018	Amendments to and recodification of the rules to improve the administration and enforcement of Colorado Charitable Solicitations laws, including revisions necessary to ensure proper administration of legislation passed by the Colorado General Assembly (SB 17-1158). The rules were also adopted on a permanent basis (CCR tracking #2018-00315).
8 CCR 1505-9: Colorado Charitable Solicitations Act	<a href="#">2018-00315</a>	Permanent	9/21/2018		Amendments to and recodification of the rules to improve the administration and enforcement of Colorado Charitable Solicitations laws, including revisions necessary to ensure proper administration of legislation passed by the Colorado General Assembly (SB 17-1158). The rules were also adopted on a temporary basis (CCR tracking #2018-00315); effective 10/1/2018 per the effective date of SB 17-1158.

### PUBLICATION AND AVAILABILITY TO THE PUBLIC

On November 1, 2018, the Secretary of State will post this document on the Department's website at: [http://www.sos.state.co.us/pubs/rule\\_making/regulatoryAgendas.html](http://www.sos.state.co.us/pubs/rule_making/regulatoryAgendas.html).

Additionally, the Secretary of State filed this agenda for publication in the November 10, 2018, Colorado Register.



## **Departmental Regulatory Agendas**

### **Department**

Department of Natural Resources

# 2019

## Regulatory Agenda

January 1, 2019-December 31, 2019



**COLORADO**

Department of Natural Resources

## Overview

The Colorado Department of Natural Resources submits the following 2019 Regulatory Agenda in fulfillment of the statutory requirements set forth in Colo. Rev. Stat. §2-7-203(4). Pursuant to state law, annually on November 1 executive-branch agencies must file a Departmental Regulatory Agenda (DRA) containing:

- A list of new rules or amendments that the department or its divisions expect to propose in the next calendar year;
- The statutory or other basis for adoption of the proposed rules;
- The purpose of the proposed rules;
- The contemplated schedule for adoption of the rules;
- An identification and listing of persons or parties that may be affected positively or negatively by the rules; and
- A list and brief summary of all permanent and temporary rules adopted since the previous DRA was filed.

The Regulatory Agenda also includes, pursuant to Colo. Rev. Stat. §24-4-103.3, rules to be reviewed as part of the Department's "Regulatory Efficiencies Reviews" during 2018 (which are denoted as such in the "purpose" column). The DRA is to be filed with Legislative Council staff for distribution to committee(s) of reference, posted on the department's web site, and submitted to the Secretary of State for publication in the Colorado Register. Each department must also present its DRA as part of its "SMART Act" hearing and presentation pursuant to Colo. Rev. Stat. §2-7-203(2)(a)(III).

The following constitutes the Department's Regulatory Agenda for 2018-2019 and is provided in accordance with Colo. Rev. Stat. §24-7-203(2)(a)(IV):

Colorado Parks and Wildlife							
Anticipated Hearing or Adoption Date	Rule Number	Rule Title	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders <i>Consider including high-level outreach bullets</i>	List of all rules adopted since previous DRE was filed
11/15/2018	2 CCR-405-1 2 CCR-406-9 3 CCR-406-16	Division Properties	Revision	33-1-107	Open for consideration of revised alcohol consumption regulations based on implementation of Senate Bill 18-243.	Hunters/Anglers	Change allows individuals who are at least twenty-one years of age or older to consume all types of liquor on public lands, including state parks and state wildlife areas, as long as such consumption has been approved by rule of the Parks and Wildlife Commission.
11/15/2018	2 CCR-406-1	Fishing	New Rule and Revision	33-1-101(4)	Open annually for all issues	Anglers	Changes include, but are not limited to, site-specific fishing regulations for the Rio Grande River, Upper Seepage Lake in Mineral County, Dry Gulch in Clear Creek County, and Chatfield, Cherry Creek and Pueblo Reservoirs.
11/15/2018	2 CCR-406-2	Big Game	Revision	33-4-102 (1)(IV)(b)	Open annually for CPI adjustments to license fees	Hunters	Finalized license price adjustments and associated license agent commission fees based on the Consumer Price Index (CPI) and implementation of the Hunting, Fishing, and Parks for Future

							Generations Act (Senate Bill 18-143).
11/15/2018	2 CCR-406-3	Furbearers and Small Game, Except Migratory Birds	Revision	33-1-101(4)	Open for annual review of turkey seasons, quotas and issues	Hunters	Finalized turkey regulations, season dates and quotas for the 2019 spring and fall seasons.
11/15/2018	2 CCR-406-15 2 CCR-405-7	Division Agents	Revision	33-4-101	Open annually for CPI adjustments to commission rates for license agents	License Agents	Finalized commission rates for license agents selling park passes and registrations, and license/pass price adjustments based on implementation of the Hunting, Fishing, and Parks for Future Generations Act (Senate Bill 18-143).
1/9/2019	2 CCR-406-17	Game Damage	Revision	33-1-101 and 33-3-103.5	Opened for implementation of a citizen petition and edits to trapping regulations	Landowners and Trappers	Opened for implementation of a citizen petition and edits to trapping regulations
1/9/2019	2 CCR-406-0	General Provisions	Revision	33-1-101(4)	Open annually for all issues	Hunters/ Anglers	Changes included, but were not limited to, Game Management Unit boundaries, regulations relating to fish management, health, importation, prohibited species, and other annual changes.
1/9/2019	2 CCR-406-2	Big Game	Revision	33-1-101(4)	Annual changes to deer, elk, pronghorn, bear, moose, sheep, goat, and lion seasons; annual changes to sheep, goat, and lion quotas	Hunters	Changes include the following: • Annual changes to season dates, limited license areas and manner of take provisions for deer, elk, pronghorn

							antelope, moose, mountain lion and bear. • Annual changes to limited license application and drawing process. • Annual changes to sheep, goat, and lion quota.
3/13/2019	2 CCR-406-3	Furbearers and Small Game, Except Migratory Birds	Revision	33-1-101(4)	Open for annual review including all issues, except turkey	Hunters	Finalized regulations setting 2019-2020 small game season dates, excluding turkey, with related provisions, including bag and possession limits and definitions.
3/13/2019	2 CCR-406-5	Small Game - Migratory Birds	Revision	33-1-101(4)	Open annually for all issues	Hunters	Finalized regulations setting 2019-2020 waterfowl and migratory bird hunting seasons and related provisions, including season dates, bag and possession limits and manner of take provisions.
3/13/2019	2 CCR-406-9	Division Properties	Revision	33-1-107	Open annually for all issues	Hunters/Anglers	Changes include, but are not limited to, generally applicable and property-specific requirements for, or restrictions on use of, wildlife properties controlled by the Colorado Parks and Wildlife, including State Trust Lands leased by the Division.
3/13/2019	2 CCR-406-11	Wildlife Parks and	Revision	33-1-101(2)	Open annually for all issues including	General Public	Opened for annual review of the entire chapter

		Unregulated Wildlife			unregulated wildlife requests		including, but not limited to, regulations pertaining to wildlife parks, sanctuaries and unregulated wildlife
3/13/2019	2 CCR-406-2	Big Game	Revision	33-1-101(4)	Annual big game clean-up	Hunters	Finalized necessary corrections and administrative cleanups to regulations previously adopted by the Parks and Wildlife Commission.
3/13/2019	2 CCR-405-5	Snowmobile Regulations	Revision	33-14-102	Open annually for all issues	Snowmobile Users	Open for annual review of the entire chapter.
5/9/2019	2 CCR-406-2	Big Game	Revision	33-1-101(4)	Annual changes to deer, elk, pronghorn, bear, and moose quotas	Hunters	Approval of the 2019 limited license numbers for deer, elk, pronghorn, bear and moose for all Game Management Units in the state that have limited licenses for these species.
9/5/2019	2 CCR-405-1	Parks and Outdoor Rec Lands	Revision	33-10-101	Open annually for all issues	Park Users	Opened for annual review of the entire chapter including but not limited to, generally-applicable and property-specific requirements for, or restrictions on use of, parks properties controlled by Colorado Parks and Wildlife.
9/5/2019	2 CCR-405-2	Boating	Revision	33-13-101	Open annually for all issues	Boaters	Open for annual review of the entire chapter.
9/5/2019	2 CCR-405-5	Off-Highway Vehicles	Revision	33-14.5-107	Open annually for all issues	OHV Users	Opened for annual review of the entire chapter including but not limited to, regulations pertaining to registration,

							off-highway use permits and required equipment for safe operation of OHV's within the state.
9/5/2019	2 CCR-405-7	Passes, Permits and Registrations	Revision	33-12-100.2	Open annually for all issues	Park Users	Opened for annual review of the entire chapter including but not limited to, regulations pertaining to eligibility requirements and fees for individual and vehicle park passes, use permits, vessel, snowmobile and off-highway vehicle registrations and license agent requirements.
9/5/2019	2 CCR-405-8	Aquatic Nuisance Species	Revision	33-10.5-107	Open annually for all issues	Boaters	Opened for annual review of the entire chapter including, but not limited to, regulations pertaining to inspections, decontaminations and impounding of vessels or other floatation devices, as well as establishing monitoring, identification and reporting procedures for suspected aquatic nuisance species.
11/14/2019	2 CCR-405-3	River Outfitters	Revision	33-32-101	Open annually for all issues	River Outfitters	Open annually for review of the entire chapter.



11/14/2019	2 CCR-406-1	Fishing	Revision	33-1-101(4)	Open annually for all issues	Anglers	Listed Above
11/14/2019	2 CCR-406-2	Big Game	Revision	33-4-102 (1)(IV)(b)	Open annually for finalizing license price adjustments and associated license agent commission fees based on the Consumer Price Index (CPI) and implementation of the Hunting, Fishing, and Parks for Future Generations Act (Senate Bill 18-143).	Hunters	Listed Above
11/14/2019	2 CCR-406-3	Furbearers and Small Game, Except Migratory Birds	Revision	33-1-101(4)	Annual changes to turkey seasons and quotas	Hunters	Listed Above
11/14/2019	2 CCR-406-15 2 CCR-405-7	Division Agents	Revision	33-4-101	Open annually for finalizing commission rates for license agents selling park passes and registrations, and license/pass price adjustments based on implementation of the Hunting, Fishing, and Parks for Future Generations Act (Senate Bill 18-143).	License Agents	Listed Above
January 2020	2 CCR-406-0	General Provisions	Revision	33-1-101(2)	Open annually for all issues	Hunters/Anglers	Listed Above
January 2020	2 CCR-406-2	Big Game	Revision	33-1-101(4)	Annual changes to deer, elk, pronghorn, bear, moose, sheep, goat, and lion seasons	Hunters	Listed Above

Colorado Oil and Gas Conservation Commission							
Schedule	Rule Number	Rule Title	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders <i>Consider including high-level outreach bullets</i>	List of all rules adopted since previous DRE was files
Unknown		Wildlife Mapping Rulemaking involving the Greater sage-grouse	New	s.34-60-105(1), -106(2)(d), C.R.S.	To update maps showing, and spatial data identifying, the individual and combined extents of restricted surface occupancy areas and sensitive wildlife habitat areas for greater sage-grouse and address any rule changes necessary based on COGCC's 1200 Series regulatory efficiency review in 2016.	Industry; surface owners, environmentalists, ecologists, and sportsmen/women .	Unknown
Unknown	318A Revisions		Revision	s.34-60-105(1), -106(2)(a), (c), (d), C.R.S.	To improve functionality of rules for the efficient development of the Greater Wattenberg Area.	Industry, mineral owners, surface owners.	Unknown
Unknown	900 Series Update		Revision	s.34-60-105(1), -106(2), C.R.S.	To update the rules and review of Table 910-1 standards.	Industry, environmentalists, surface owners.	Unknown
Unknown	400 Series Update		Revision	s.34-60-105(1), -106(2), C.R.S.	To address any rule changes necessary based on COGCC's 400 Series regulatory efficiency review in 2017.	Industry.	Unknown

10/30/2018	500 Series Update		Revision	s.34-60-105(1), -106(2), -108, C.R.S.	To address any rule changes necessary based on COGCC's 500 Series regulatory efficiency review in 2017.	Industry, participants in COGCC hearings.	Anticipated
Unknown	Well Category Determination Procedures Update		Revision	s.34-60-105(1), -106(2), C.R.S.	To address any rule changes necessary based on COGCC's Well Category Determination Procedures regulatory efficiency review in 2017.	Industry.	Unknown

Colorado Division of Reclamation, Mining and Safety							
Hearing or Adoption Date	Rule Number	Rule Title	New Rule, Revision, or Repeal?	Statutory or Other Basis for Adoption of Rule	Purpose of Proposed Rule	High-Level Stakeholders <i>Consider including high-level outreach bullets</i>	Status <i>Adopted/Not Adopted/Withdrawn/ Ongoing</i>
Unknown	2 CCR 407-2f	Rules and Regulations of the Colorado Mined Land Reclamation Board for Coal Mining previously identified by OSM* as requiring revision.	Revisions	34-33-108(1), C.R.S., and 30 C.F.R. §§ 732.17, 733.12 and 733.13	Response to Federal 732 letters previously received from OSM. Minor edits and corrections to errors and omissions, as well as substantive amendments and revisions to several sections of the rules.	Coal Mine industry, interested citizens, environmental groups, and local jurisdictions	Waiting for response from OSM.
2019	2 CCR 407-1 Rule 1, 5 & 7	Hard Rock/Metal Mining Rules	Revision and Repeal	C.R.S. 34-32-101	Remove outdated rules associated with Custom Mills, Clean up language in Prospecting Section and add clarifying language to Rule 7 addressing surety releases and reductions for Designated Mining Operations	Hard Rock Mining Community and Environmental Community	On going: Draft rules submitted to Reclamation Board for Consideration 10/24, Stakeholders meetings scheduled for December / January, Adoption hearings set for March / April 2019

2019	2 CCR 407-1 Rule 1, 2, 3 and 6	Construction Material Rules and Regulations	Revision	C.R.S. 34-32.5-101	Align Act and rule requirements for submittal of annual fees, reports and maps, Clarify procedure for attending MLRB meetings via phone or video, Add language specifying signage requirements for public notice and mine identification signs	Construction Material Operators, Environmental Community	On going: Draft rules submitted to Reclamation Board for Consideration 10/24, Stakeholders meetings scheduled for December / January, Adoption hearings set for March / April 2019
------	--------------------------------------	---	----------	-----------------------	---	--	---

Colorado Division of Water Resources							
Hearing or Adoption Date	Rule Number	Rule Title	New Rule, Revision, or Repeal?	Statutory or Other Basis for Adoption of Rule	Purpose of Proposed Rule	High-Level Stakeholders <i>Consider including high-level outreach bullets</i>	Status <i>Adopted/Not Adopted/ Withdrawn/ Ongoing</i>
2019	2 CCR 402-1	Dam Safety and Construction Rules	Revisions	Sections 37-87-102, 105, 37-80-102(k), 24-4-103	Amending rules to modify spillway requirements and clarify extreme precipitation estimate methodologies	Public at large, dam owners, construction and dam design engineers, FEMA, Homeland Security	Ongoing
03/31/18	2 CCR 402-3	Adjudicatory Hearings before the Colorado Ground Water Commission	Revisions	Sections 37-90-111(1)(h) , 24-4-131	<i>Update and revise rules that govern rulemaking and adjudicatory hearings with open and clear procedures</i>	Designated Ground Water Management Districts and constituents, water lawyers	Adopted

2019	2 CCR 402-7	Statewide Nontributary Rules	Review for revisions	Sections 37-90-137(9)(a) , (b) and 37-80-102(1)(g)	<i>Governs well permitting of nontributary water statewide. The review will be conducted to update the provisions of the rules.</i>	Water users throughout the state, water lawyers, water engineers, ground water modelers	Ongoing
2019	2 CCR 402-9	Fees set and collected by the State Engineer for the Water Data Bank Cash Fund, the Division of Water Resources Publication Cash Fund, and the Satellite Monitoring System Cash Fund	Review for revisions	Sections 37-80-111.5, 37-80-102(1)(h) , 24-72-205, 24-4-103	<i>Need to review for consistency and appropriateness</i>	Water users, satellite system users, CWCB, water engineers and firms, public at large, water lawyers	Ongoing
2019	2 CCR 402-10	Rules for Permitting the Development and Appropriation of Geothermal Resources through the use of Wells (Geothermal Rules)	Review for revisions	Sections 37-80-102(1)(g) & (k), 37-90-138, 37-90.5-106 thru 108	<i>Potential clean up of certain areas may be useful long term dependent upon review.</i>	Water users, specific towns and areas of the state where geothermal resources exist, water resources engineers, geologists, geothermal resource developers, water lawyers, & public at large,	Ongoing.

7/01/18	2 CCR 402-11	Rules for the Permitting and Use of Waters Artificially Recharged into the Denver Basin (Denver Basin Artificial Recharge Extraction Rules	Review for revisions	Sections 37-80-102(1)(g) & (k), 37-90-138, 37-90-137(9)(d)	<i>Revise to make consistent with HB17-1076</i>	Water users, water resource engineers including modelers, geologists, cities and users overlying the Denver Basin, water lawyers	Adopted
01/01/18	2 CCR 402-14 Remedial Action	Rules and Regulations for administration of Licensing, Financial Responsibility, Continuing Education and	Revisions	Section 37-91-104(1)	<i>Revise drillers and pump installers, license process, continuing education process and remedial actions.</i>	Public at large, well owners, well construction contractors, water users, pump installers, Colorado Ground Water Assoc., Colorado Well Contractors Assoc.	Adopted
05/15/18 Rule 5.2.9 adopted. Hearing on Artificial Recharge 11/26/18. All others in 2019	2 CCR 410-1	Rules and Regulations for the Management and Control of Designated Ground Water	Revisions and amendments	Sections 37-90-107, 108, 109 and 111	<i>This will involve three separate rulemaking processes. One will be to redefine and clarify artificial recharge, storage and replacement plans. The second will be to amend Rule 5.2.9 to determine the alluvial aquifer and all of the Fan &amp; White River aquifers in the Upper Crow Ck basin over-appropriated. Finally, an overall</i>	Designated ground water basin water users, water lawyers, water resource engineers, local ground water management districts	Ongoing

					<i>revision to the complete set of rules will be addressed after the amendments above are complete</i>		
2019		Water Court Republican River Compact Rules	New Rules	U.S. Supreme Court in Kansas v. Nebraska & Colorado, Number 126, Original, Sections 37-80-102(1)(a) & 37-80-104	<i>The rulemaking will consider the requirement to offset impacts in excess of Colorado's apportionment under the Republican River Compact as determined under the Final Settlement Stipulation, and work to ensure that all users of waters accounted for in Colorado's Republican River Compact Accounting have a stake in ensuring ongoing compact compliance</i>	Water users in the Northern High Plains designated ground water basin.	Ongoing
2019		Water Court Rules and Regulations concerning HB 16-1228, Agricultural Water Protection Water Right Bill	New Rules	Sections 37-80-123(1)(a) and 37-92-308(12)	<i>This rulemaking is required of the Division of Water Resources under HB 16-1228 to develop rules for substitute supply plans for decreed agricultural water protection water rights per section 37-92-305(19)</i>	Water users in the South Platte and Arkansas River basins.	Ongoing



2018		Water Court Rules Governing the Withdrawal of Groundwater in Water Division No. 3	New Rules	Sections 37-80-104 & 37-92-501	<i>Regulation and Use of water withdrawals from the Confined and Unconfined aquifers in the San Luis Valley</i>	Water users in San Luis Valley	Ongoing
------	--	---	-----------	--------------------------------	---	--------------------------------	---------

Colorado State Board of Land Commissioners							
Anticipated Hearing or Adoption Date	Rule Number	Rule Title	New rule, revision, or repeal?	Statutory or other basis for adoption or change to rule	Purpose of Proposed Rule	Stakeholders Consider including high-level outreach bullets	Status Adopted/Not Adopted/Withdrawn/Ongoing
2018	2 CCR 409-1;	State Forest Lands	Revision or Repeal, TBD	§36-7-104; §36-7-201; §24-4-103	Review the rule to determine if the best course of action is to revise or repeal rule to simplify and align the rule with contemporary forest management protocols and resources	Colorado State Forest Service; Beneficiaries of affected land trusts; Jackson and Larimer County governments; State Forest Steering Committee; Colorado Parks and Wildlife; lessees of affected parcels; adjacent landowners to adjacent parcels; Natural Resources stakeholder notification groups	Ongoing (Last reviewed 2018)

## Calendar of Hearings

Hearing Date/Time	Agency	Location
12/04/2018 02:00 PM	Division of Central Services	1525 Sherman St., Room 104
12/03/2018 01:30 PM	Taxpayer Service Division - Tax Group	1375 Sherman Street, Room 127, Denver, CO 80203
11/30/2018 02:00 PM	Taxpayer Service Division - Tax Group	1313 Sherman Street, Room 220, Denver, CO 80203
11/30/2018 02:00 PM	Taxpayer Service Division - Tax Group	1313 Sherman Street, Room 220, Denver, CO 80203
11/30/2018 02:00 PM	Taxpayer Service Division - Tax Group	1313 Sherman Street, Room 220, Denver, CO 80203
11/30/2018 02:00 PM	Taxpayer Service Division - Tax Group	1313 Sherman Street, Room 220, Denver, CO 80203
11/30/2018 02:00 PM	Taxpayer Service Division - Tax Group	1313 Sherman Street, Room 220, Denver, CO 80203
11/30/2018 02:00 PM	Taxpayer Service Division - Tax Group	1313 Sherman Street, Room 220, Denver, CO 80203
11/30/2018 02:00 PM	Taxpayer Service Division - Tax Group	1313 Sherman Street, Room 220, Denver, CO 80203
11/30/2018 02:00 PM	Taxpayer Service Division - Tax Group	1313 Sherman Street, Room 220, Denver, CO 80203
11/30/2018 02:00 PM	Taxpayer Service Division - Tax Group	1313 Sherman Street, Room 220, Denver, CO 80203
12/03/2018 02:00 PM	Taxpayer Service Division - Tax Group	1375 Sherman Street, Room 127, Denver, CO 80203
12/03/2018 02:00 PM	Taxpayer Service Division - Tax Group	1375 Sherman Street, Room 127, Denver, CO 80203
12/03/2018 02:00 PM	Taxpayer Service Division - Tax Group	1375 Sherman Street, Room 127
12/03/2018 02:00 PM	Taxpayer Service Division - Tax Group	1375 Sherman Street, Room 127, Denver, CO 80203
12/03/2018 02:00 PM	Taxpayer Service Division - Tax Group	1375 Sherman Street, Room 127, Denver, CO 80203
12/03/2018 02:00 PM	Taxpayer Service Division - Tax Group	1375 Sherman Street, Room 127, Denver, CO 80203
12/03/2018 02:00 PM	Taxpayer Service Division - Tax Group	1375 Sherman Street, Room 127, Denver, CO 80203
12/07/2018 08:30 AM	Behavioral Health	1575 Sherman Street
12/03/2018 02:00 PM	Division of Insurance	1560 Broadway, Ste 110 D, Denver CO 80202
12/03/2018 02:00 PM	Division of Insurance	1560 Broadway, Ste 110 D, Denver CO 80202
12/03/2018 02:00 PM	Division of Insurance	1560 Broadway, Ste 110 D, Denver CO 80202
12/03/2018 02:00 PM	Division of Insurance	1560 Broadway, Ste 110 D, Denver CO 80202
12/03/2018 02:00 PM	Division of Insurance	1560 Broadway, Ste 110 D, Denver CO 80202
12/03/2018 02:00 PM	Division of Insurance	1560 Broadway, Ste 110 D, Denver CO 80202
12/07/2018 01:30 PM	Peace Officer Standards and Training Board	1300 Broadway Conf Room 1C Denver CO
12/19/2018 10:00 AM	Laboratory Services Division	4300 Cherry Creek Drive South, Denver, CO 80246
12/19/2018 10:00 AM	Laboratory Services Division	4300 Cherry Creek Drive South, Denver, CO 80246
12/19/2018 10:00 AM	Laboratory Services Division	4300 Cherry Creek Drive South, Denver, CO 80246
12/19/2018 10:00 AM	Center for Health and Environmental Data (1006, 1009 Series)	4300 Cherry Creek Drive South, Denver, CO 80246
12/03/2018 03:00 PM	Historical Society	History Colorado Center Lanny & Sharon Martin Room, 1200 Broadway Denver, CO 80203
12/07/2018 08:30 AM	Income Maintenance (Volume 3)	1575 Sherman Street
12/07/2018 08:30 AM	Income Maintenance (Volume 3)	1575 Sherman Street
12/14/2018 09:00 AM	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	303 East 17th Avenue, 11th Floor, Denver, CO 80203
12/07/2018 08:30 AM	Food Assistance Program (Volume 4B)	1575 Sherman Street
12/07/2018 08:30 AM	Food Assistance Program (Volume 4B)	1575 Sherman Street
12/07/2018 08:30 AM	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	1575 Sherman Street
12/07/2018 08:30 AM	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	1575 Sherman Street
12/07/2018 08:30 AM	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	1575 Sherman Street
12/07/2018 08:30 AM	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	1575 Sherman Street
12/07/2018 08:30 AM	State Board of Human Services (Volume 12; Special Projects)	1575 Sherman Street